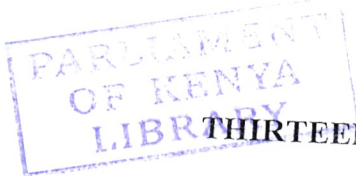




REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FIRST SESSION – 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

.....

REPORT ON THE PETITIONS FOR THE REMOVAL FROM OFFICE OF JULIANA
CHERERA; IRENE MASIT; JUSTUS NYANG'AYA; AND FRANCIS WANDERI AS
COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION (IEBC).

(VOLUME II) ANNEXURES

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

THE NATIONAL ASSEMBLY PARLIAMENT BUILDING	
DATE:	01 DEC 2022
FILED BY:	THURSDAY
CHAIR, DC - JUSTICE & LEGAL AFFAIRS	
HON. GEORGE MURUGA, MP	
Benson Inzoga	

DECEMBER 2022

TABLE OF CONTENTS

- Annexure 3: Conveyance**
- Annexure 4: Petitions**
- Annexure 5: Advertisement**
- Annexure 6: Letters from the Clerk of the
National Assembly inviting the
Petitioners and the Respondents
for the hearings**
- Annexure 7: Correspondences**
- Annexure 8: Rules**
- Annexure 9: Preliminary Objections**
- Annexure 10: Gazette Notice No. 182 of 2021**

ANNEXURE 3:

CONVEYANCE



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (FIRST SESSION)

CONVEYANCE OF PETITIONS

(No. 12 of 2022)

REGARDING REMOVAL OF MEMBERS OF THE INDEPENDENT
ELECTORAL AND BOUNDARIES COMMISSION

Honourable Members,

1. Standing Order 225(2) of the National Assembly Standing Orders requires the Speaker to report to the House any Petition other than those presented by a Member. In this regard, I wish to convey to the House that my office is in receipt of four (4) Petitions seeking the removal of Commissioners of the Independent Electoral and Boundaries Commission (IEBC) pursuant to the provisions of Article 251 of the Constitution.
2. Hon. Members, Article 251 of the Constitution grants any citizen the right to petition the National Assembly for the removal of a member of a constitutional commission or holder of an independent office for either serious violation of the Constitution or statute, gross misconduct, or incompetence.

The Petitions received are as follows—

A. Petition by the Republican Party

3. The Petition seeks the removal from office of Ms. Juliana Cherera, Mr. Justus Nyang'aya, Ms. Irene Masit and Mr. Francis Wanderi on the grounds of violation of the Constitution and other laws. In the Petition, the Republican Party states that the four (4) Commissioners, through their action of issuing a press statement rejecting election results on grounds that the Chairperson of the IEBC had conducted the verification and tallying process in an opaque manner—

(a) failed to promote public confidence in the integrity of the office they hold and brought dishonour to the nation and lack of dignity for the office, contrary to Article 73(1)(a) of the Constitution;

(b) failed to adhere to the guiding principles of leadership and integrity under Article 73(2) of the Constitution;

(c) failed to act in a manner that avoids demeaning the office that they hold, contrary to Article 75 of the Constitution;

(d) failed to adhere to the values and principles of public service, contrary to Article 232 of the Constitution; and

(e) failed to adhere and take into account the provisions of section 9 of the Leadership and Integrity Act, No. 19 of 2012 and should therefore take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.

4. Hon. Members, The Republican Party ultimately prays for the consideration of the Petition to His Excellency the President pursuant to Article 251(3) of the Constitution.

B. Petition by Rev. Dennis Ndwiga Nthumbi

5. Hon. Members, This second Petition seeks the removal from office of Ms. Juliana Cherera, Ms. Irene Masit, Mr. Francis Wanderi, and Mr. Justus Nyang'aya on the grounds of serious violations of the Constitution and the law; gross misconduct; and incompetence.

6. In the Petition, the petitioner one Rev. Nthumbi, states that the Commissioners committed serious violations of the Constitution by—

(a) demonstrating partiality and biased conduct in agreeing to the proposal to alter the results of the presidential elections in favor of one candidate or in the alternative to force a run-off contrary to Articles 10, 73 (2) (b) (c), 75, 138, 232, and 249 of the Constitution; Sections 9, 26 and 30 of the

IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act;

- (b) agreeing to the incentives and giving in to the proposal by the National Security Advisory Council (NSAC) to alter the results of the presidential election contrary to Articles 10, 73 (2) (b) (c), 75, 138, 232, 249 of the Constitution; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act;
- (c) disowning the results of the 2022 presidential elections in which the commissioners had participated in the verification and tallying, contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act;
- (d) accepting the proposal to alter the results of the election to subvert the will of the people of Kenya contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, and 24 of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act;

ANNEXURE 4:

PETITIONS

IN THE MATTER OF A PUBLIC PETITION IN UNDER
ARTICLES 1,3,10,13,21,22,24,27,37,38,73,75,76,77,78,81,86,99,119,
193,232,249 & 251 OF THE CONSTITUTION (2010) OF KENYA AND
IN THE MATTER OF SUBMISSION UNDER STANDING

ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY

PETITION

DL S
Please advise.
21/10/22

We the undersigned, Republican Liberty Party; registered as No. 058 of the
Registered Political Parties; under the Political Parties Act (No. 11 of
2011),

Laws of Kenya; do hereby DRAW the attention of the House to the
following;

1. **THAT**, the following Commissioners, now popularly known as the Four
(4) commissioners, Juliana Cherera, Justus Nyang'aya, Irene Masit and
Francis Wanderi (hereinafter referred to jointly as "**the Four
Commissioners**") jointly and severally:

1. Have seriously violated the Constitution of the Republic Kenya and
other relevant laws as shall be demonstrated in this Petition including
contravention of Chapter Six.

2. Have been involved in gross misconduct in the performance of their
duties in their offices.

3. Are grossly incompetent for reasons as shall be demonstrated in this
Petition.

2. THE FACTS

THAT, The Four Commissioners attempted to subvert the will of the
people and overturn the sovereignty of the People of Kenya.

2.1 On the **15th of August 2022**, as the Petitioners, among other Kenyans,
were eagerly and with bated breath, waiting for results which had
been set for 3pm and later postponed to 4pm, e treated to a split
screen by our media stations and the Four Commissioners, led by the
vice chair, Juliana Cherera, issued a statement in which they said the
following;

"Part of the Commissioners are here because this is what we want to
say. We have done the 2022 General Elections in the most effective

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ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

and efficient manner. We have ensured that all the challenges have been contained but, as you can see, we are part of the commissioners in the IEBC. We have ensured we have improved the standards and we have ensured we have consistently communicated what is happening. We have partnered with all stakeholders and we it for a

Page 1 of 21

fact that as the commission we have done a good job. But some things need to be put out there. As you can see the 4 of us are not at Bomas of Kenya where the results are going to be announced because of the opaque nature of how this phase has been handled. We therefore cannot take ownership of the results that is going to be announce. However, we have an open door that people can go to court and because of the same we urge Kenyans to be peaceful because the rule of law is going to prevail. We will give a comprehensive statement."

- 2.2 On 16th August 2022, the Four Commissioners issued another statement which was read by the vice chair Juliana Cherera stating as follows:

"THAT, our reasons to decline to take ownership of the results so declared and announced are:

One, that the aggregation of the percentages of the result scored by the 4 presidential candidates who were on the ballot as declared by Mr. Chebukati presented to us are mathematical absurdity that defies logic. Take notice that Mr. Chebukati aggregation is as follows: Raila Odinga 48.85%, William Ruto 50.49%, Mwaure Waihiga 0.27% and George Wajackoyah 0.44%. This summation gives us a total of 100.01%. The 0.01% translates to approximately 142,000 votes which will make a significant difference in the final result. We therefore decline to take ownership of the result because the aggregation resulted in a total exceeding percentage of 100 which cast doubt on the accuracy of the source of figures tallied and when we demanded that we verify our records, the chairman declined, overruled us and insisted on announcing and declaring the said result.

Two, Contrary to the Constitution and legislation the results declared and announced did not indicate the total number of registered voters, total number of votes cast or the number of rejected votes, if any. In this regard, the results announced by Mr. Chebukati lacked a critical

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

ingredient namely the total number of valid votes cast to support the percentages scored by the 4 candidates. Unless demonstrated otherwise, we all know that the percentage is essentially a fraction of a whole number hence if for example the 7.17 million valid votes cast in favour of the winning candidate as declared and announced by Mr. Chebukati translates to 50.49% then it 50.49 of what? Further take notice that Mr. Chebukati claimed that Raila Odinga attained 25% of voted in 34 counties while William Ruto attained 25% in 39 counties. The question is, which figures in the 34 and 39 counties respectively constituted the independent variable to warrant the conclusion of 25% in 34 counties and 25% in the 39 counties for Raila Odinga and William Ruto respectively? In the absence of a verifiable explanation we concluded that the process that went into generation of Form 34C which he used to declare results was opaque and incapable of earning our ownership and confidence.

Three, Guided by the authority of Maina Kiai case Petition No. 106 of 2016 as upheld by the Court of Appeal in Civil Appeal No. 105 of 2017 and affirmed by the Supreme Court of Kenya, we state categorically that the results of the presidential elections held on 9th August 2022 and declared and announced by Wafula Chebukati on 15th August 2022 belonged to himself and do not represent the declaration and announcement by the Independent Electoral and Boundaries Commission. The Commission has to process the results before they are declared and announced by the chairperson. For the avoidance of doubt, let me quote the Maina Kiai case. It says (states the Maina Kiai case). The emphasis commission chairperson has conducted the election as though he is the national returning officer, a non-existent role, and his role in declaring results that were not approved by plenary by all seven members renders the results unconstitutional to the extent that this is his own results as opposed to those of IEBC. In keeping to Article 138(2) of the Constitution there is no national presidential election in Kenya, but rather presidential election is held in each constituency.

Four, that in contrary to the constitution and legislation by the time the chairman declared and announced the final results, results from certain constituencies had not been announced. "

2.3 **THAT**, during the Press statement on 16th August 2022, in response to questions by the media, the vice chair Juliana Cherera responded as

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

follows: "Let me answer at what point did we realize the opaqueness. As I said yesterday, we have conducted the election and we did it to the best. We have improved in the processes as IEBC. We have upped the bar. We have considered all the stages and processes that are supposed to be taken care of. But come to the last phase, the tallying phase. As I said yesterday, that at the end there was opaqueness. Things were not being shown to the public. You have been there even at Bomas of Kenya and the screens were supposed to show cumulative numbers of the presidential candidates votes as they garnered as we continued to read the results. Isn't it? The same was not displayed to the public and the same was not given to the commissioners. Just like the public was not aware, the same, the commissioners was not aware of the cumulative results as the day goes by. So 2 days to the end, it was not given out so you could not clearly say that we have tallied 10 million and this 10 million this is how it is distributed. We have tallied 15, we have tallied 12 million. How is it distributed? The public needed to know. Progressively. The same the commissioners didn't know."

2.4 **THAT**, during the Press statement on 16th August 2022, in response to questions by the Francis Wanderi responded as follows: "As a commission we were not, as the vice chair has said, we were not doing the tallying. The tallying that was being done by our technical staff was not known to the commissioners until the moment around 4.30 when Mr. Chebukati brought the results tabulated in the format. And he did not give us an opportunity to discuss the results. He just said these are the results of each particular candidate, they have scored this and they have met the constitutional threshold and therefore he is going to read the results and he did not allow us to discuss to see whether there were any discrepancies so as a commissioners we did not have other results. Those are the results that we were supposed to have discussed before they are declared in accordance with the legal requirements. So we don't have and we did not have because we were not doing any other results. It is those ones that he was doing. That is simple".

He further stated as follows when asked whether they believe there would have been a difference from the Forms 34B that had been uploaded and ones Kenyans had already tabulated and the final results: "We have given you our statement and the statement has indicated 100 and 01%, the rest is for you to decide. We will give you

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

to go and look at it. We do not know the actual numbers but even if you looked at the screen before the results were announced by Chebukati, they were required to announce constituencies that had not been announced. There were about 20 or slightly 20, between 20 and 30 because we know that Prof. Guliye was carrying those results to go and announce before Chebukati announces presidential results.

- 2.5 When the matter was taken to court, and the Four Commissioners were enjoined in the Petitions as Respondents, the Four Petitioners filed responses supporting the Petitions and calling for the annulment of the Presidential elections in clear contravention of Section 2(2)(a) of the Fourth Schedule of the Independent Electoral and Boundaries, 2011 which states that a member of the Commission may not whether y indirectly, in any manner support or oppose any party or candidate participating in an election or any side participating in a referendum, or any of the issues in contention between parties, candidates or sides (emphasis ours).
- 2.6 **THAT**, during the tallying process ongoing at Bomas of Kenya, both Petitioners had been accredited by IEBC as observers for County and Parliamentary elections and at the National Tallying Centre and on diverse days and dates went to the Bomas of Kenya to observe the process. We clearly saw the announcement of the presidential results by the Four Commissioners. Both Petitioners were also closely following up on the tallying of results which IEBC had made accessible through a public portal where all members of the public were able to download the results and do their individual and independent tallies.
- 2.7 We take cognizance of the December 2007 election which was the fourth electoral exercise in Kenya since the return of the multiparty era in the early 1990s. The statements by the Commissioners were akin to the statements by the then Chairman of the defunct Electoral Commission of Kenya in 2007 where he said 'As I told you previously, I am not happy to see results coming the way they are coming because there's no reason why results should be delayed. There cannot be any excuse and I don't find any excuse at all. Because the sole purpose of introducing counting at the polling station was to hurry up the process. And, although I agree there was a challenge because this time there were more voters, the turnout was higher than ever before. That is no excuse for us not to be here on a Saturday for elections we

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

held on a Thursday.' He further stated that some people 'may have been cooking results'. We cannot downplay the role of language in this case. Language is important as a facilitator of effective communication among actors. Language is an object of conflict and the language used by politicians, policy makers, the civil society or the general citizens of states, play a key role in the security of a country and consequently peace and stability of a nation.

2.8 The statements by the Four Commissioners came at a time when Kenyans had begun to get used to the perception that they could make a difference through the vote, whether in county, parliamentary or presidential elections. The 2022 General Elections were also the Fourth in respect of presidential elections after the annulment of the first presidential elections in 2017. They came at a time when Kenya had gone through a robust learning process on how to conduct elections. Those statements failed to maintain the integrity of the tallying process bringing about the validity of the presidential election into question.

2.9 We further take cognizance of the nature of presidential elections in Kenya. In any presidential election, the stakes are generally high. Considering the magnitude of a presidential election and the consequences thereof, as said by Thomas Hobbes in *T Hobbes Leviathan* (Sydney: Broadview Press, 2002) p 215 and Justice Breyer in *George Bush v Albert Gore* 531 US 98 (2000) at 153 (Stevens and Ginsburg JJ concurring) it is quite risky to interfere intentionally with this poll. As the post-2007 election events in Kenya demonstrate, flawed presidential elections can have tragic disastrous and catastrophic consequences. In 2007, following the announcement of the much-disputed election results, we witnessed an outbreak of riots and violence in the country. The violence caused considerable suffering to thousands of people. Within days of the announcement of the presidential result, close to 500,000 people were forced to flee from their homes, over 1000 people lost their lives and property worth billions of shillings was also destroyed.

10 Through their statements and documents filed in the supreme court of Kenya, the four commissioners alleged that the presidential election was irredeemably and irretrievable flawed. Flawed presidential elections affect the right of citizens to participate in regular elections, which is a fundamental guarantee in states that...

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

governed by the rule of law. Courts in many jurisdictions have underlined the value of the ballot. The supreme courts of India and the USA, two of the world's largest democracies, have emphasized the value of voting rights as can be seen in *Mohinder Gill v The Chief Election Commissioner* (1978) 1 SCR 405 at 419 where the Indian Supreme Court (Lyer J) termed this right at 'basic' and *Wesberry v Sanders* 376 US 1 (1964) at 17 where Justice Black of the US Supreme Court argued that the right to vote is 'precious'.

2.11 Following the Press statements by the Four Commissioners, the Petitioners, as indeed many other Kenyans, as can be borne out of social media reports have been asking themselves a lot of questions. For instance,

2.11.1 If the National Returning Officer role is non-existent as they allege, why didn't the commissioners raise this issue as soon as Mr. Chebukati gazetted himself as the National Returning officer vide gazette notice number 4955 Vol. CXXIV - No. 79 of 28th April 2022? Why did they wait until 16th August 2022, when Mr. Chebukati had announced Presidential Elections for them to now tell Kenyans that such a position did not exist in law? Is it a clear dereliction of duty, negligence, recklessness, carelessness, ineptitude or utter and sheer incompetency?

2.11.2 Going by the statement of Commissioner Francis Wanderi, that the commissioners did not know of any results until when Mr. Chebukati brought Form 34C to them at about , 30, what then were the commissioners doing at the National Tallying Centre for the 7 Jays before announcement of Results? Is it again not a clear dereliction of duty, negligence, recklessness and disregard for the taxpayers who pay them to work to ensure that our elections are credible, is that even an honest and truthful representation of issues as is required of them by our constitution and legislation particularly on the conduct and public officers?

2.11.3 The Four Commissioners further informed us that there was a discrepancy of the total tally of 0.01% which is approximately 142,000 votes. Is that even mathematically correct and accurate? That statement alone brings the Four Commissioners into disrepute, shame, dishonor, opprobrium and discredit.

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

2.11.4 Commissioner Francis Wanderi said Mr. Chebukati went to them and just said these are the results of each particular candidate, they have scored this and they have met the constitutional threshold and therefore he is going to read the results and he did **not allow us to discuss to see whether there were any discrepancies** (emphasis ours) so as a commissioners we did not have other results'. This then begs the question: If they did not have other results, which discrepancies were they to see? According to the oxford dictionary discrepancy means an illogical or surprising lack of compatibility or similarity between two or more facts. The Cambridge dictionary gives its meaning as a difference between two things that should be the same while the Merriam Webster dictionary gives it as the quality or state of disagreeing or being at variance. So, what exactly were they to compare them with?

2.11.5 If the Four Commissioners were aware that Prof. Guliye was going to announce the results of the 27 constituencies, why then turn around and sensationalize them? To an ordinary Kenyan, it meant that the results of the 27 constituencies had not been received, verified and tallied, which essentially would mean the result would have been different had that happened.

2.11.6 What was the real motive by the Four Commissioners in issuing the statement and alleging that the 2022 General Elections were opaque when observers, both local and international declared that Kenya had the most transparent elections so far, a fact that was confirmed by the Supreme Court of Kenya?

2.11.7 Did the Four Commissioners understand their role as electoral managers in the peace and stability of our country taking into consideration that the 2007 elections, pointedly, made the link between elections and violence? Did they understand or take into consideration the impact of their statements to the peace and security of the country? Having participated in the preparations and conduct of the elections, as electoral managers as they said, did they understand that due to the high stakes and polarizing nature of electoral competition; from party primaries, campaigns, casting of ballot, counting and tallying of results to declaration of winners; all elections have the potential of engendering conflict and resulting in violence? Why were they so keen to thrust this country

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193,232,249 & 251 OF THE CONSTITUTION (2010) OF KENYA AND
IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

into a 2007 scenario by issuing non-factual, contradictory, dishonest and untruthful statements as has been demonstrated herein? Where is their loyalty? To self or to the country?

2.11.8 Was it a coincidence that on or about the 18th July 2022, the Daily Nation newspapers had a catchy headline "The Making of an Opaque Election" to which the Four Commissioners being IEBC Commissioners neither reacted to nor responded and would later use the same terms of an "opaque election". Was this part of a wider scheme to subvert the will of the people?

2.12 It is because of these questions that the petitioners aver that the Four Commissioners failed inter alia in the following critical ingredients of the law;

2.12.1 Their joint and several actions failed to promote public confidence in the integrity of the office they hold and brings dishonor to the nation and lack of dignity for the office contrary to Article 73(1)(a) of the Constitution of Kenya.

2.12.2 They failed, jointly and severally, to adhere to the guiding principles of leadership and integrity under Article 73(2) of the Constitution of Kenya including inter alia personal integrity and suitability; objectiveness and impartiality in making decisions, such as the enormous decision they made; honesty in the execution of a public duty; and accountability to Kenyans for their decisions and actions.

2.12.3 They failed, jointly and severally, to act in a manner that avoids demeaning the office that they held contrary to Article 75 of the Constitution of Kenya.

2.12.4 They failed, jointly and severally to adhere to the Values and principles of public service Contrary to Article 232 of the Constitution of Kenya including exercising high standards of professional ethics and transparency and provision to the public of accurate information.

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

2.12.5 They failed, jointly and severally, to adhere to and take into consideration the provisions of Sections 8 and 9 of the Leadership and Integrity Act by failing to act in the best interest of the people of Kenya. Section 9 provides that Subject to the Constitution and any other law, a State officer shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.

2.13 The Four Commissioners in their pleadings as filed in court purported to hire a firm of lawyers to represent the IEBC. Their lawyer, Paul Muite SC, stated "We rely on a resolution by four the seven Commissioners. We have stated in our pleadings that we are legitimately representing the commission. Our colleagues have filled the pleadings on the basis of instructions, I believe, by the CEO, who we say is the CEO implements instructions by the commission". This act is contrary to the provisions of Section 10(7) of the Independent Electoral and Boundaries Commission Act, 2011 as read together with the Public Finance Management Act and the Public Procurement and Asset Disposal Act, 2015.

3. THE LAW

THAT, the Four Commissioners jointly and severally acted in contravention of the following provisions of the Law:

A. THE CONSTITUTION OF KENYA, 2010

Article 1(1) and (2) provides that

- 1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.
- 2) The people may exercise their sovereign power either directly or through their democratically elected representatives.

Article 3(1) provides that every person has an obligation to respect, uphold and defend this Constitution.

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193,232,249 & 251 OF THE CONSTITUTION (2010) OF KENYA AND
IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

Article 10 provides for the National values and principles of governance as follows:

- 1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them:-
 - a) Applies or interprets this Constitution;
 - b) Enacts, applies or interprets any law; or
 - c) Makes or implements public policy decisions.
- 2) The National values and principles of governance include-
 - a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
 - b) Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;
 - c) Good governance, integrity, transparency and accountability; and
 - d) Sustainable development.

Article 21 provides for the implementation of rights and fundamental freedoms

- 1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

Article 27 provides for Equality and freedom from discrimination

- 1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- 2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

Article 38 provides for Political rights

- (1) Every citizen is free to make political choices, which includes the right-

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

- a) To form, or participate in forming, a political party;
- b) To participate in the activities of, or recruit members for, a political party; or
- c) To campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for;

- a) Any elective public body or office established under this Constitution; or
- b) Any Office of any political party of which the citizen is a member.

(3) Every Adult citizen has the right, without unreasonable restrictions-

- a) To be registered as a voter;
- b) To vote by secret ballot in any election or referendum; and
- c) To be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.

Article 73 provides for the responsibilities of leadership

(1) Authority assigned to a State officer;

- a) is a public trust to be exercised in a manner that;

- i) Is consistent with the purposes and objects of this Constitution; ii) Demonstrates respect for the people; iii) Brings honor to the nation and dignity to the office; and iv) Promotes public confidence in the integrity of the office; and
- v) Vests in the State officer the responsibility to serve the people, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include;

- a) Selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- b) Objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper

**IN THE MATTER OF A PUBLIC PETITION IN UNDER
ARTICLES 1,3,10,13,21,22,24,27,37,38,73,75,76,77,78,81,86,99,119,
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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

- (i) honesty in the execution of public duties; and
- (ii) the declaration of any personal interest that may conflict with public duties;
- d) Accountability to the public for decisions and actions, and
- e) Discipline and commitment in service to the people.

Article 75 provides for the conduct of State Officers

- (1) A state officer shall behave, whether in public and official life, in private life or in association with other people, in a manner that avoids;
 - a) Any conflict between personal interests and public or official duties;
 - b) Compromising any public or official interest in favour of a personal interest; or
 - c) Demeaning the office the officer holds.
- (2) A person who contravenes clause (1), or **Article 76, 77 or 78(2)**-
 - a) Shall be subject to the applicable disciplinary procedure for the relevant office; and
 - b) May, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

Article 81 provides for the General principles for the electoral system

The electoral system shall comply with the following principles;

- a) Freedom of citizens to exercise their political rights under **Article 38**;
- b) Universal suffrage based on the aspiration for fair representation and equality of vote; and
- c) Free and fair elections, which are;-
 - i) By secret ballot ii) Free from violence, intimidation, improper influence or corruption;
 - iii) Conducted by an independent body; iv) Transparent; and
 - v) Administered in an impartial neutral efficient accurate and

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

Article 86 provides for Voting

At every election, the Independent Electoral and Boundaries Commission shall ensure that:-

- a) Whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent.
- b) The votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station.
- c) The results from the polling stations are openly and accurately collated and promptly announced by the returning officer.

Article 13(8)c provides that after counting the votes in the polling stations, the Independent Electoral & Boundaries Commission shall tally and verify the count and declare the result.

Article 232 provides for the Values and Principles of public service

- (1) The values and principles of public service include-
 - a) High standards of professional ethics;
 - b) Accountability for administrative acts;
 - c) Transparency and provision to the public, timely, accurate information;
- (2) The values and principles of public service apply to public service in;-
 - a) All state organs in all levels of government; and
 - b) All state corporations.

Articles 249 provides for the objects, authority and funding of commissions and independent offices.

- (1) The objects of the commission and the independent offices are to;-

a) Protect the commission and the independent offices

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193,232,249 & 251 OF THE CONSTITUTION (2010) OF KENYA AND
IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

- b) Secure the observance by all State organs of democratic values and principles; and
 - c) Promote constitutionalism.
- (2) The commission and the holders of Independent offices- a).
Are subject only to this constitution and the law; and
- b) Are independent and not subject to direction or control by any person by any person or authority.

Article 251 provides for the Removal from officer

(1) A member of a commission (other than an *ex officio* member), or the holder of an independent office, may be removed from officer only for;-

- a) A serious violation of this constitution or any other law, including a contravention of Chapter six;
- b) Gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- c) Physical or mental incapacity to perform the functions of office.
- d) Incompetence; or
- e) Bankruptcy

(2) A person desiring the removal of a member of a commission or a holder of an independent officer on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.

(3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the president.

B. LEADERSHIP AND INTEGRITY ACT

Section 3 on the guiding values, principles and requirements provides that;-

- (1) The primary purpose of this Act is to ensure that State Officers respect the values, principles and requirements of the Constitution.

**IN THE MATTER OF A PUBLIC PETITION IN UNDER
ARTICLES 1,3,10,13,21,22,24,27,37,38,73,75,76,77,78,81,86,99,119,
193,232,249 & 251 OF THE CONSTITUTION (2010) OF KENYA AND
IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

(2)A State Officer shall respect the values, principles and the requirements of the Constitution, including;

- a) The national values and principles provided for under **Article 10** of the constitution.
- b) The rights and fundamental freedoms provided for under Chapter Four of the Constitution;
- c) The responsibilities of leadership provided for under **Article 73** of the Constitution.
- d) The principles governing the conduct of State Officers provided for under **Article 75** of the constitution.
- e) The educational, ethical and moral requirements in accordance with **Articles 99(1)(b)** and **193(1)(b)** of the Constitution.
- f) In so far as is relevant, the values and principles of Public Services as provided for under **Article 232** of the Constitution.

Section 4 provides that every person has the responsibility of implementing the provisions of this Act to the extent required by this Act.

Section 7 provides that;-

- (1)A state officer shall respect and abide by the Constitution and the law.
- (2)A state officer shall carry out the duties of the office in accordance with the law.
- (3)In carrying out the duties of the office, a state officer shall not violate the rights and fundamental freedoms of any person unless otherwise expressly provided for in the law and in accordance with **Article 24** of the Constitution.

Section 8 provides that a State Office is a position of public trust and the authority and responsibility vested in a state officer shall be exercised by the state officer in the best interest of the people of Kenya.

Section 9 provides that Subject to the Constitution and any other law, a state officer shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.

Section 10 provides that;-

A state officer shall, to the best of their ability;-

- a) Carry out the duties of the office efficiently and honestly

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

- c) Keep accurate records and documents relating to the functions of the office; and
- d) Report truthfully on all matters of the organization which they represent.

Section 11 provides that

A State Officer shall;

- a) Carry out duties of the office in a manner that maintains public confidence in the integrity of the office.
- b) Treat members of the public and other public officers with courtesy and respect.
- c) Not discriminate against any person, except as is expressly provided by the law.
- d) To the extent appropriate to the office, maintain high standards of performance and level of professionalism within the organization.

Section 13 provides for the Moral and ethical requirements as follows:-

(1) For the purposes of **Articles 99(1)** and **193(1)** of the Constitution, a person shall observe and maintain the following ethical and moral requirements:-

- a) Demonstrate honestly in the conduct of public affairs subject to the Public Officer Ethics Act (No. 4 of 2003).
- b) Not to engage in activities that amount to abuse of office
- c) Accurately and honestly represent information to the public.
- d) Not engage in wrongful conduct in furtherance of personal benefit.
- e) Not misuse public resources.
- f) Not discriminate against any person, except as expressly provided for under the law.
- g) Not falsify any records.

Section 23 provides for political neutrality

(1) An appointed State Officer, other than a Cabinet Secretary or a member of a County Executive Committee shall not, in the performance of their duties:-

- (a) Act as an agent for, or further the interests of a political party or candidate in an election; or manifest support for or opposition to any political party or candidate in an election

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

- (b) An appointed State Officer or Public Officer shall not engage in any political activity that may compromise the political neutrality of the office subject to any laws relating to elections.

Without prejudice to the generality of subsection (2) a public officer shall not:-

- (a) Engage in activities of any political party or candidate or act as an agent of a political party or candidate in an election.
(b) Publicly indicate support for or opposition against any political party or candidate participating in an election.

Section 24 provides for impartiality of State Officers

- (1) A state officer shall, at all times, carry out the duties of the office with impartiality and objectivity in accordance with **Articles 10, 27, 73(2)(b) and 232** of the constitution and shall not practice favoritism, nepotism, tribalism, cronyism, religious bias or engage in corrupt or unethical practices.

Section 29 provides that a State Officer shall not knowingly give false or misleading information to any institution or the public.

Section 30 provides that state officer shall not falsify any records or misrepresent information to the public.

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
ACT, 2022 FOURTH SCHEDULE ON THE CODE OF CONDUCT FOR
MEMBERS AND EMPLOYEES OF THE COMMISSION.**

Section 1 provides for the impartiality and independence of members.

- (1) Every member and employee of the commission shall impartially and independently perform functions of the Commission in good faith and without fear, favor or prejudice, and without influence from:- (a)
Any arm of the Government;
(b) Any State Officer;
(c) Any Public Officer;

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ARTICLES 1,3,10,13,21,22,24,27,37,38,73,75,76,77,78,81,86,99,119,
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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

(e) Candidate participating in an election; or (f) Any other person, authority or organization.

Section 2 (2)(a) provides that;

A member of the Commission may not whether directly or indirectly, in any manner support or oppose any party or candidate participating in an election or any side participating;

(a) In a referendum, or any of the issues in contention between parties, candidates or sides.

Section 4 provides that;

- (1) A member or employee of the Commission shall;
 - (a) Treat the public and colleagues with courtesy and respect;
 - (b) Discharge all their duties in a professional, timely and efficient manner and in line with the rule of law; and
 - (c) Respect the rights and freedom of all persons that he may interact with.

PUBLIC OFFICER ETHICS ACT, 2003

Section 3 provides for;

The determination of responsible Commission.

(1) This section determines what body is the responsible Commission for a public officer for the purposes of this Act.

(2) The Committee of the National Assembly responsible for the ethics of members is the responsible for;

- (a) Members of the Electoral Commission and the Public Service Commission; and

Section 8 provides that;

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193,232,249 & 251 OF THE CONSTITUTION (2010) OF KENYA AND
IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

- (1) A Public Officer, shall to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly.

Section 9 provides that;

- (1) A Public Officer shall;-

- (a) Carry out his duties in a way that maintains public confidence in the integrity of his office;
- (b) Treat the public and his fellow public officers with courtesy and respect;
- (c) To the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organization;
- (d) Discharge any professional responsibilities in a professional manner.

Section 10 provides that;

A Public Officer shall carry out his duties in accordance with the law. In carrying out his duties, a public officer shall not violate the rights and freedoms of any person under Part V of the constitution.

Section 16 provides that;

- (1) A public officer shall not, in or in connection with the performance of his duties as such:-
- (a) Act as an agent for, or so as to further the interest of, a political party;
or
 - (b) Indicate support for or opposition to any political party or candidate in an election.
 - (c) A public officer shall not engage in political activity that may compromise or be seen to compromise the political neutrality of his office.

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer.

4. **THAT**, we confirm that Parliament is the only body mandated by the Constitution of Kenya to deal with this matter.
5. **THAT**, we are not aware of any matter pending before a court of law, constitutional or legal body in regards to the issues raised in this Petition.

HEREFORE, YOUR HUMBLE PETITIONERS PRAY THAT PARLIAMENT

1. Finds that the Four Commissioners, namely Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi seriously violated the Constitution of Kenya, 2010 and other relevant laws including contravention of Chapter Six of the Constitution of Kenya.
2. Finds that the Four Commissioners, namely Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi were involved in gross misconduct in the performance of their office holder's functions as Commissioners of the Independent Electoral and Boundaries Commission.
3. Finds that the Four Commissioners, namely Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi are grossly incompetent.

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IN THE MATTER OF SUBMISSION UNDER STANDING
ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**

4. Finds that the Four Commissioners, namely Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi are unfit to hold state or Public Office.
5. Pursuant to the provisions of Article 251(3) of the Constitution, send this Petition to the president.

AND YOUR PETITIONERS WILL EVER PRAY

DATED at Nairobi this 13th day of October 2022

1. Name of the Petitioner	Full Address	National ID	Signature
ZACHARIAH .M. MATAYO NATIONAL CHAIRPERSON REPUBLICAN LIBERTY PARTY	P.O BOX 20148 00100 NAIROBI KENYA	<u>10908992</u>	<i>Momanyi</i>

PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR
IEBC COMMISSIONERS UNDER THE CONSTITUTION.

② CNA -
Having perused through
the petition, the
Prayer is in order & we
may proceed
to process.
It complies with the
requirements of the Law.
2/11/2022

TO:

THE CLERK OF THE NATIONAL ASSEMBLY,
OFFICE OF THE CLERK,
MAIN PARLIAMENT BUILDING,
P.O. BOX 41842-00100,
NAIROBI.

①
Dips / was in
to process in
with the 30% and
Law.
2/11/2022

②
Mr. Kabana,
Please deal.
2/11/2022

NO. 2

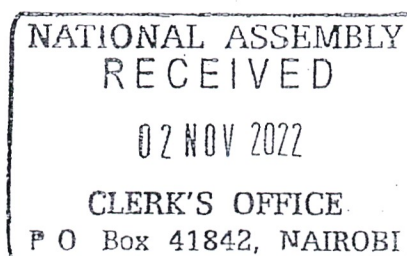
RE: PETITION TO THE NATIONAL ASSEMBLY UNDER ARTICLES 37 AND 119 OF
THE CONSTITUTION OF KENYA, 2010; PETITION TO PARLIAMENT
(PROCEDURE) ACT (2012) AND THE STANDING ORDERS 219 AND 223 OF
THE NATIONAL ASSEMBLY

I, the undersigned, a citizen of the Republic of Kenya, in the interest of the public lodge this petition to the National Assembly towards the removal of the following four commissioners of the Independent Electoral and Boundaries Commission (IEBC); Juliana Cherera (Vice Chair), Irene Masit, Francis Wanderi, and Justus Nyang'aya on the grounds to be stated hereunder:

I humbly draw the attention of the House to the following;

1) The Constitution

- 1) The Preamble to the Constitution of Kenya recognizes the aspirations of all Kenyans for a government based on essential values of human rights, equality, freedom, democracy, social justice and the rule of law and the exercise by the people of Kenya of their sovereign and

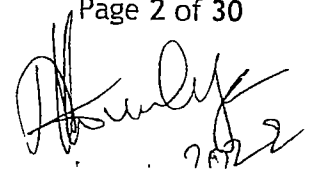


Page 1 of 30
7/Nov. 2022

**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR
IEBC COMMISSIONERS UNDER THE CONSTITUTION.**

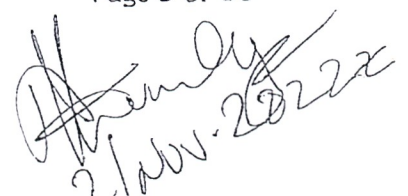
inalienable right to determine the form of governance of Kenya and having participated fully in the making of this Constitution.

- 2) **Article 1 (1) of the Constitution** provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution.
- 3) **Article 2(1) of the Constitution of Kenya** pronounces the supremacy of the Constitution and provides that the Constitution binds “all persons and all State Organs at both levels of government”.
- 4) **Article 2(4) of the Constitution** provides among other things, any act or omission in contravention of the Constitution is invalid.
- 5) **Article 3 of the Republic of Kenya** obligates every person to respect, uphold and defend the Constitution.
- 6) **Article 10(1) of the Constitution** states that the national values and principles of governance bind all states organs, State Officers, Public officers and all persons whenever any of them enacts, applies or interprets any law. The National values and principles of governance include patriotism and national unity.
- 7) **Article 19 (2) of the Constitution** provides that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and realization of the potential of all human beings.



PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR
IEBC COMMISSIONERS UNDER THE CONSTITUTION.

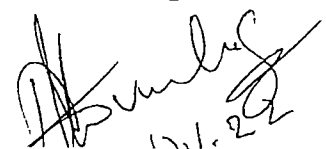
- 8) Under Article 20(1) of the Constitution, the Bill of Rights applies to all and binds all State organs and all persons. Further, under subsection (2), every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
- 9) Under article 37 of the Constitution, every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.
- 10) Article 73 of the Constitution provides for responsibilities of leadership and under Clause 1(a), the Constitution provides that the authority assigned to the state officer is a public trust to be exercised in a manner that “brings honour to the nation and dignity to the office” and “promotes public confidence in the integrity of the office”. Clause 2 thereof provides for the guiding principles of leadership and integrity to include “selection on the basis of personal integrity, competence and suitability”.
- 11) Article 73 (2) (b) (c) contains provisions on the guiding principles and integrity to include *inter alia* objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices; and selfless service based on the public interest, demonstrated by honesty in the execution of public duties and ii) the declaration of any personal interest that may conflict with public duties.
- 12) Article 75 provides that a state officer shall behave, whether in public and official life, in private life, or in association with other


7/Nov/2022

**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF
FOUR IEBC COMMISSIONERS UNDER THE CONSTITUTION.**

persons, in a manner that avoids: a) any conflict between personal interest and public or official duties; b) compromising any public or official interest in favour of a personal interest; or c) demeaning the office the officer holds. Additionally, it provides that a person who contravenes clause (1) or Article 76, 77, 78 (2) shall be subject to the applicable disciplinary procedure for the relevant office, and b) may in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

- 13) **Article 88 of the Constitution of Kenya 2010**, establishes the IEBC. It further provides that the IEBC shall be responsible for conducting or supervising referenda and elections of any elective body or office by this constitution, and any other election prescribed by an Act of Parliament.
- 14) **Article 95 of the Constitution** states that the National Assembly represents the people of the constituencies, special interests, deliberates on and resolves issues of concern to the people.
- 15) **Article 118 of the Constitution** states that Parliament shall conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and facilitate public participation and involvement in the legislative and other business of the Parliament and its committees.
- 16) **Article 119 of the Constitution** provides that every person has a right to petition Parliament to consider any matter within its authority,

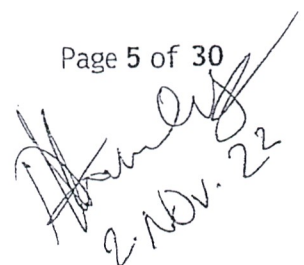


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PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR
IEBC COMMISSIONERS UNDER THE CONSTITUTION.

including enacting, amending or repealing any legislation, and Parliament shall make provisions for the exercise of this right.

- 17) Article 138 (10) (a) provides that the chairperson of the Independent Electoral and Boundaries Commission shall declare the result of the election.
- 18) Article 232(1) on values and principles of public service, provides *inter alia* that the values and principles of public service include high standards of professional ethics, transparency and provision to the public of timely, accurate information.
- 19) Article 248 of the Constitution applies to the commissions and independent offices which *inter alia* includes the Independent Electoral and Boundaries Commission.
- 20) Article 249 of the Constitution of Kenya provides the objects of the Commissions and the independent offices are to: protect sovereignty of the people of Kenya; secure observance by all state organs of democratic values and principles; promote constitutionalism.
- 21) Article 249 further provides that the holders of and the commissions and holders of independent offices are only subject to the Constitution and the law and are independent and not subject to direction or control by any person.


2. NOV. 22

PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR
IEBC COMMISSIONERS UNDER THE CONSTITUTION.

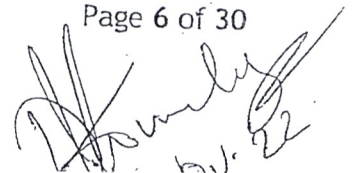
22) Article 251 of the Constitution provides that a member of a commission may be removed from office only for *inter alia*: serious violation of this constitution or any other law, including a contravention of chapter six; and gross misconduct, whether in the performance of the member's or office holder's functions or otherwise.

2) THE LEADERSHIP AND INTEGRITY ACT, NO. 19 OF 2012

23) The Leadership and Integrity Act was enacted to give effect to, and establish procedures and mechanisms for the effective administration of chapter six of the Constitution of Kenya 10.

24) The Leadership and Integrity Act dedicates the entire **part II** to the **General Leadership and Integrity Code**. Section 6 of the Act provides that the whole of part II shall be the general leadership and integrity code for state officers. Further, it provides that provisions of **chapter six of the constitution** and the provisions of the **Public Officer Ethics Act, 2003** shall form part of the general code of public officers and in the event there is conflict, the provisions of the Leadership and integrity Act shall prevail.

25) Section 7 of the Leadership and integrity Act provides on observance of the rule of law by state officers. It requires a state officer to respect and abide by the constitution and the law. It also requires state officers to carry out their duties in strict observance of the law and in doing

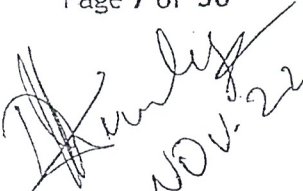


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PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF
FOUR IEBC COMMISSIONERS UNDER THE CONSTITUTION.

this they are required not to violate rights and freedoms of any persons except as provided under Article 24 of the Constitution.

- 26) Section 8 provides that the state office is a position of trust and the authority and responsibility vested in a state officer shall be exercised by the state officers in the best interest of the people of Kenya.
- 27) Section 9 provides that subject to the constitution and any other law, a state officer shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.
- 28) Section 10 provides that a state officer shall to the best of their ability carry out the duties of the office efficiently and honestly; in a transparent and accountable manner; keep accurate records and documents relating to the functions of the officer and report truthfully on all matters of the organization which they represent.
-
- 29) Section 11 requires a state officer to *inter alia* carry out their duties in a manner that maintains public confidence in the integrity of the public office and maintain high standards of performance and professionalism.
- 30) Section 16 on the provisions of conflict of interest provides among other things that a public officer shall use their best efforts to avoid being in a situation where personal interests conflict or appear with the state officer's official duties.


NOV-22

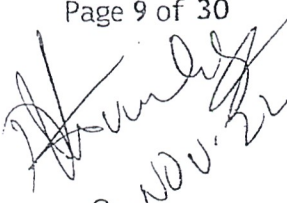
PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF
FOUR IEBC COMMISSIONERS UNDER THE CONSTITUTION.

- 31) On misuse of official information, section 22 states that a state officer shall not directly use or allow any person under the officer's authority to use any information obtained through or in connection with the office, which is not available in the public domain, for the furthering of any private interest, whether official or otherwise.
- 32) Section 24 on impartiality requires that a state officer shall at all times carry out the duties of the office they hold and objectivity in accordance with articles 10, 27, 73(2) (b) and 232 of the Constitution and shall not *inter alia* practice favouritism or engage in corrupt or unethical practices.
- 33) Section 29 states that a state officer shall not knowingly give false or misleading information to any person.
- 3) THE PUBLIC OFFICER ETHICS ACT, NO. 4 OF 2003
- 34) The Public Officer Ethics Act ("the POEA") was enacted to advance the ethics of public officers by providing for a code of conduct and ethics for public officers and requiring financial declarations from certain public officers and for connected purposes.
- 35) Section 3 of the POEA determines what body is the responsible commission for a public officer for the purposes of POEA. Sub-section 2 provides *inter alia* that the committee of National Assembly shall be responsible for ethics of members is the responsible Commission for the

PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR
IEBC COMMISSIONERS UNDER THE CONSTITUTION.

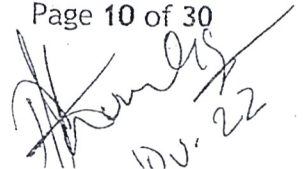
members of the Electoral Commission and the Public Service Commission.

- 36) Part II of POEA provides for specific codes of conduct and ethics. Section 5 provides that each commission shall establish a specific code of conduct and Ethics for the public officers for which it is responsible.
- 37) Section 7 of POEA sets out the general code of conduct and Ethics for public Officers.
- 38) Section 8 provides that a public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly.
- 39) Section 9 on professionalism provides that a public officer shall *inter alia*: a) Carry out his own duties in a way that maintains public confidence in the integrity of his office; treat the public and his fellow public officers with courtesy and respect; to the extent appropriate to his office seek to improve the standards of performance and level of professionalism in his generation; and discharge any professional responsibilities in a professional manner.
- 40) Section 10 provides that a public officer shall carry out his duties in accordance with the law, and in carrying out the said duties they shall not violate the rights and freedoms of any person under the constitution.


7. NOV. 22

PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF
FOUR IEBC COMMISSIONERS UNDER THE CONSTITUTION.

- 41) Section 12 on public interest provides that a public officer shall use his best efforts to avoid being in a position in which his personal interest conflicts with his official duties. In subsection six (6) the act defines *personal interest* to include the interest of a spouse, relatives or business associates.
- 42) Section 16 provides that a public officer shall not, in or in connection with the performance of his duties as such; act as an agent for, or so as to further the interest of a, political party or indicate support for opposition to any political party or candidate in an election. The Section further provides that a public officer shall not engage in political activity that may compromise or be seen to compromise the political neutrality of his office.
- 43) Section 17 provides that a public officer shall not practice nepotism or favouritism.
- 44) Section 19 provides that a public officer shall not knowingly give false or misleading information to members of the public or to any other public officer.
- 45) Section 35 of the Act regarding investigations provides that the responsible commission for a public officer may investigate to determine whether the public officer has contravened the code of conduct an ethics. Such commission may refer a matter to another appropriate body or pursuant to a complaint by any person. Further the commission may refer the matter to another appropriate body for


17.11.22

PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF
FOUR IEBC COMMISSIONERS UNDER THE CONSTITUTION.

investigation and that body shall investigate the matter within a reasonable time and submit the report to the commission on its findings.

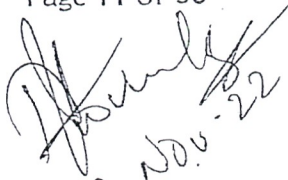
46) Section 36 provides that if an investigation discloses that the public officer has contravened the code of conduct and ethics, the responsible Commission shall, within the prescribed time; take appropriate disciplinary action or if responsible commission does not have the power to take the appropriate action, refer the matter to a body or person who does have that power.

47) Section 38 of POEA provides that if a result of an investigation under this part, the commission is of the view that the civil or criminal proceedings ought to be considered, the commission shall refer the matter to the Attorney General or other appropriate authority.

4) THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION, ACT NO.
9 OF 2011

48) The IEBC Act, is established to make provision for the appointment and effective operation of the IEBC as established by Article 88 of the Constitution. At Section 4, the IEBC Act sets out the functions of the commission similar with the functions set out in Article 88 of the Constitution.

49) The IEBC Act at section 9 requires that all members of the IEBC and including the Chairperson to take and subscribe to the oath of office


Nov-22

PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR
IEBC COMMISSIONERS UNDER THE CONSTITUTION.

and affirmation before assuming office. The relevant part of the oath states that

"... I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour bias, affection, ill-will or prejudice"

50) Section 26 of the IEBC Act affirms the independence of the IEBC. It provides that the IEBC shall in the performance of its functions, not be subject to control or any person or authority but shall observe the principle of participation and the requirement for the consultation with stakeholders.

51) Section 30 of the IEBC Act provides that a member of the commission who knowingly subverts the process of free and fair elections or who knowingly obstructs the commission in the discharge of its functions or otherwise interferes with the functions of the commission commits an offence and is liable to a term of imprisonment not exceeding three years or to a fine of not more than one million shillings or to both. Additionally, a person so convicted shall not be eligible to hold public office for a period of ten years following the conviction.

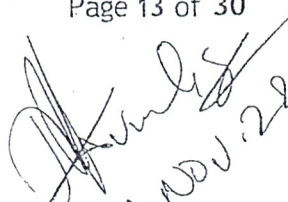
PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR
IEBC COMMISSIONERS UNDER THE CONSTITUTION.

5) FACTUM OF THE PETITION

52) The Constitution of Kenya, 2010 provides that general elections of Members of Parliament (Article 101), the President (Article 136(2)(2), the Members of County Assembly (Article 177(a) and Governor (Article), shall be held on the second Tuesday in August in every fifth year. The Constitution of Kenya bestows upon the IEBC the duty to conduct the general elections. The Constitutional framework is reinforced by an array of legislation whose objective is to guarantee fairness, credibility and legitimacy of the electoral process.

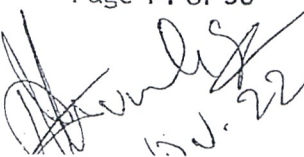
53) Early in the year 2022, the IEBC commenced the preparations of Kenya's 2022 general elections. The IEBC held pressers and issued press statements in connection and by way of updates on the general elections. The statements of the IEBC were conducted mostly in the presence of all the members of the commission.

54) The preparations for the general elections was completed and the general elections were held on the 9th of August 2022. The general elections in some parts of the Country were held and completed on the same day of 9th August, 2022 and the Commission through its various agents proceeded with the process of verification and tallying in the various polling stations. For the election of MCA, MP, and Governor, the elections were announced on the same day while others delayed to later dates.


NOV. 22

PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF
FOUR IEBC COMMISSIONERS UNDER THE CONSTITUTION.

- 55) The Elections for the President were tallied at the polling stations on the same day of the elections and were transmitted to the National Tallying Center (NTC) for verification and tallying. All the members of the Commission were present at the NTC and took part in the tallying and verification of the presidential votes cast. This is in accordance with the responsibility placed on the Commission collectively under Article 138 (3) (c) of the Constitution.
- 56) During the tallying and verification of the results for the election of the President, all the commissioners actively participated in the verification of the results at the NTC. In fact, they took turns in announcing the results as verified and tallied, and were present and active during the actual verification at the NTC.
- 57) The verification and tallying process continued without any hitch until the 15th August 2022 when the elections results for the election of the President were expected to be announced. On 15th August, between 3pm and 5pm, at the NTC where the results of the President were to be announced, violence broke out but were immediately quelled by the security forces present.
- 58) Just before the Chairperson of the IEBC could declare the presidential election results pursuant to Article 138 (10) the Constitution, Four Commissioners of the IEBC Juliana Cherera (Vice Chair of IEBC), Irene Masit, Francis Wanderi, and Justus Nyang'aya held a presser at Serena Hotel, Nairobi announcing their rejection of


15.8.22

PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF
FOUR IEBC COMMISSIONERS UNDER THE CONSTITUTION.

the yet to be announced results on the grounds that they were opaque due to the manner the Chairperson of IEBC had been conducting the verification and tallying exercise.

59) The four commissioners complained that they were excluded from the tallying and verification process of the presidential elections at the NTC. They also complained that they had been assigned peripheral roles that were not connected to the tallying and verification process.

60) The walk-out of the four commissioners from the NTC and the various press statements casted doubt on the credibility of the results of the General elections, despite having been present at the NTC for the verification and tallying of the presidential results. They did not offer explanation as to why they had, in the first place, been part of the process of the verification and tallying of the presidential results if they knew it was opaque and despite having admitted that the elections had been managed efficiently and credibly.

61) The Petitioners in the 2022 Presidential Election Petition anchored their Petitions on the pressers by the four Commissioners of IEBC at Serena. The Supreme Court held that:

"[242] But are we to nullify an election on the basis of a last-minute boardroom rupture (the details of which remain scanty and contradictory) between the Chairperson of the Commission and some of its members? In the absence of any evidence of violation of the Constitution and our electoral laws, how can we

[Signature]
2. Nov. 22

PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR
IEBC COMMISSIONERS UNDER THE CONSTITUTION.

upset an election in which the people have participated without hindrance, as they made their political choices pursuant to Article 38 of the Constitution? To do so, would be tantamount to subjecting the sovereign will of the Kenyan people to the quorum antics of IEBC. It would set a dangerous precedent on the basis of which, the fate of a Presidential Election, would precariously depend on a majority vote of IEBC Commissioners. This we cannot do. Clearly the current dysfunctionality at the P. E. P No. E005 OF 2022 (Consolidated with) P. E. P Nos. E001, E002, E003, E004, E007 & E008 OF 2022 Page 104 of 133 Commission impugns the state of its corporate governance but did not affect the conduct of the election itself."

- 62) The press statements by the four commissioners had the following effects: -
- a) It called into question the credibility of the entire elections held;
 - b) It formed the main basis of the Presidential petitions filed by the Petitioners in P. E. P No. E005 OF 2022 (Consolidated with) P. E. P Nos. E001, E002, E003, E004, E007 & E008 OF 2022 (hereinafter "P. E. P No. E005 OF 2022"); and
 - c) Due to the closely contested elections, the pressers by the four commissioners reasonably inflamed the violence at the NTC, unrest around the Country and a threat to the peace and security of the country.

17. Mr. RAPHAEL TUJU is the Executive Director of Azimio La Umoja-One Kenya Coalition Party and RAILA ODINGA being the Coalition's candidate in the recently concluded presidential election of 9th August 2022 is a clear pointer of collusion between the four commissioners and AZIMIO LA UMOJA -ONE KENYA COALITION PARTY, Party leaders and or its agents. The conduct of the four commissioners, in this regard is contrary to the code of conduct of the members of the commission.
18. In the petition, the Azimio la Umoja candidate's contention was against the IEBC declared results citing irregularities and violation of the law by IEBC and its chairperson.
19. The Four commissioners filed replying affidavits in support of the petition and argued fully against the chairperson and IEBC.
20. The actions and conduct of the four commissioners were a confirmation of the existence of a cosy and flourishing relationship with the Azimio La Umoja-ONE Kenya Coalition Party and/or its agents. The same is contrary section 26 and 30 of Independent Electoral and Boundaries Commission Act ,2011.
21. Their actions were a violation of their oath office. They swore to uphold the constitution and the law.
22. Their manifest partiality and attempt to subvert the will of the people was a threat to National Security, peace and order.
23. The press statement issued by the Four Commissioners and the resulting chaos at the bomas of Kenya Tallying center clearly shows a connection.
24. The four commissioners were individually and collectively acting as an agent to the Azimio La Umoja-ONE Kenya Coalition Party and its associates within the commission. The same is contrary to section 30 of Independent Electoral and Boundaries Commission Act ,2011.
25. Despite the four commissioners supporting the petition at the supreme court, the court on 5th of September upheld the decision of the declaration of the president elect as within the constitution and law.
26. Upon the court decision being made, the four commissioners did not accompany the chairperson while issuing a statement on the 5th of September but issued a separate statement signed by all of them.
27. The conduct of the four commissioners depicts a divided commission which according to their averments is dysfunctional. It is paradoxical to make such a

claim yet they were proxies of external forces to foment division within the commission.

28. The three commissioners, WAFULA CHEBUKATI, BOYU MOLU and ABDI GULIYE will have served their six years in office by end of January 2023 thus leaving the four commissioners in office.
29. The structure and composition of the commission will be dented if left to the four commissioners: indeed, it is unimaginable how the commission will be run by renegade commissioners who took side with the petitioners in the 2022 supreme court petition.
30. How will the four commissioners work with the secretariat which they could not agree on tallied and verified results, appointment of law firm to represent the commission in court and many other issues which are in public domain?
31. The four commissioners violated the principles of chapter six of the constitution and hence unacceptable to have Commissioners who are in office and their actions are contrary to the expectations of the constitution.
32. The independence of the commission is cardinal in running the affairs of the commission. The four commissioners defiled the principles of neutrality contrary to Article 81 (e) (v) of the constitution. They were openly working with one party in the 2022 election and thus openly biased.
33. It is untannable to have commissioners who contravened the law and constitution which they swore to abide to remain in office.
34. The conduct of working in cohort with others to form government against the constitutional provision of Article 3(2) is unacceptable in an open and democratic society.
35. The heinous act of attacking the chairperson and other commissioners, at bomas national tallying center while in in full glare of the public media was meant to create national disharmony and violence. The end results would be post-election violence with severe consequences.
36. The actions of the four commissioners AMOUNT to total insubordination of the commission contrary to section 30 of Independent Electoral and Boundaries Commission Act, 2011.
37. Several calls have been made for the commissioner to resign but have not resigned and in respect in which this petition is made and pray that the matter be placed before the relevant house committee and or as you may deem it fit.

38. The subject matter herein and the issues of which this petition is made are not pending before any court of law, or constitutional or legal body.

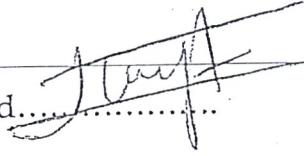
Hereof your humble petitioner prays that the national assembly and due to the urgency of the matter take the necessary steps as per article 251 (3) on removal of commissioners and grant the following prayers.

- A. To find that Independent Electoral and Boundaries commission commissioners, IRENE MASIT, JULIANA CHERERE, FRANCIS WANDERI and JULIUS NYANGAYA, have committed serious violations of the constitution and the law, including contravention of chapter six of the constitution of Kenya.
- B. To find that that Independent Electoral and Boundaries commission commissioners, IRENE MASIT, JULIANA CHERERE, FRANCIS WANDERI and JULIUS NYANGAYA are guilty of gross misconduct while performing their duties as members of the commission.
- C. To find that Independent Electoral and Boundaries commission commissioners, IRENE MASIT, JULIANA CHERERE, FRANCIS WANDERI and JULIUS NYANGAYA are incompetent to hold the office of commissioners.

And your petitioner will ever pray

PETITIONED AND DATED AT NAIROBI THIS 9TH DAY OF SEPTEMBER 2022

GEOFFREY LANGAT ID NO 25154044 P.O BOX 26903-00100 NAIROBI

Signed.....

TO;

The Clerk of the National Assembly,
National Assembly of the Republic of Kenya
Parliament Buildings
P.O. Box 41842-00100
NAIROBI.

DLS (NO 4)
To review and
advise.
20/09/22

PETITION TO PARLIAMENT UNDER ARTICLE 251(1) OF THE CONSTITUTION OF KENYA, 2010 AND STANDING ORDER NUMBER 230 OF THE NATIONAL ASSEMBLY STANDING ORDERS ON THE REMOVAL OF A MEMBERS OF INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.

I, the undersigned,

Bona fide citizen of the Republic of Kenya;

DRAWs the attention of the Honourable House to the following:-

1. On the 2nd day of September, 2021, **Juliana Cherera, Francis Mathenge, Irene Masit and Justus Abonyo** hereinafter referred to as "**the four Commissioners**" took oath of office as Commissioners of the Independent Electoral and Boundaries Commission (IEBC).
2. By dint of the oath of office the four Commissioners took on the aforementioned date, the four Commissioners were required and expected to perform their functions competently and diligently and jealously defend and guard the Constitution.
3. Upon taking oath of office, the four Commissioners did participate and took part in the 9th August, 2022 General Elections preparedness to wit voter registration, voter education, procurement and logistical arrangements as well as nomination of candidates for various elective positions.
4. At the conclusion of the voting exercise, IEBC including the four Commissioners actively took part in the counting, collation, tabulation, verification and tallying of the votes cast on the 9th day of August, 2022. For instance, Commissioner Juliana Cherera announced to the Nation at the IEBC National Tallying Center (NTC) in Bomas the presidential election results tabulated in Form 34B from Juja Constituency. Her counterpart Mr.

Petition for the removal of Members of a constitutional Commission under Article 251 of the Constitution of Kenya, 2010

Mr. Dennis Abisai DLS

Place as assigned and
summons 11/10/2022



Francis Mathenge on the other hand took his turn to the podium and announced the results from Funyula Constituency, Busia County.

5. On the 15th day of September, 2022 after **six (6) days** of rigorous exercise of verification and tallying of the votes, just before the Chairperson of the Commission could declare the presidential election results, the four commissioners walked out of the NTC in revolt to hold a press conference at Serena Hotel wherein they stated that the results that the Chairperson was about to announce and which they had actively participated in verifying, collating and tallying were **opaque** and as a result they could not take ownership of the said results.
6. On the 16th day of September, 2022, the four Commissioners released a detailed statement on their **ILLOGICAL** reasons for disowning the results that were declared by the Chairperson of the IEBC as follows:-
 - i. **THAT** the results as declared by the Chairperson of the IEBC did not take into account the registered number of voters and rejected votes;
 - ii. **THAT** the aggregate of the percentile received by the four presidential candidates exceeded 100% by 0.01 ergo constituted a mathematical absurdity; and
 - iii. **THAT** the declaration that President Dr. William Ruto received 25% of the total votes cast in 39 counties and former Prime Minister Rt. Honourable Raila Odinga attainment of 25% of the votes cast in 34 counties was not based on any independent variables to warrant the declaration of the results as was declared by the Chairperson of the IEBC.

7. **IN ADDITION AND WITHOUT PREJUDICE TO THE FOREGOING**, the appointment of Commissioner Irene Masit was in violation of the Constitution for the reason that at the time of her appointment as a Commissioner for the IEBC, five years had not lapsed from the time she contested for the elective position of Member of Parliament.

8. Honourable Members of the 14th August House, the totality of the surmise of the conduct of the four Commissioners in light of the above leads to an

inevitable conclusion of serious violation of the Constitution, incompetence and gross misconduct in the performance and discharge of the duties of the office bearer of an independent constitutional office as we lay down bare herein below:-

9. **Article 81 of the Constitution of Kenya, 2010** behooved the four Commissioners to be independent, impartial, neutral and accurate in conducting and managing the 2022 general elections.
10. Additionally, the said Article at **81(e) (ii)** further mandated and obligated the four Commissioners to conduct a free and fair election which is free from violence, intimidation, improper influence or corruption.
11. **Articles 2 & 3 of the Constitution** restates the supremacy of the Constitution and binds all persons including the four Commissioners to protect, uphold and defend the Constitution.
12. **Article 10 of the Constitution** establishes the rule of law and good governance as infallible principles of governance. These principles are reflected in many parts of the constitution including **Article 2** above which provides that 'any law or action that is in contravention of the constitution is void to the extent of the inconsistency and contravention.'
13. The rule of law and good governance principles requires that every state organ or state officer/public officer acts only within the powers conferred upon them by and in accordance with the Constitution. But the Principles also requires every state organ/officers to discharge a legal obligation required of them by the Constitution or any other law. Crucially, the rule of law requires state and public officers to act in accordance with the law, including and without equivocation, good governance, integrity, transparency and accountability.
14. The rule of law is instructive that any action undertaken by a state/public officer should be based strictly on the Constitution and the law. Even where a public/state officer undertakes an action on the premise of a discretion, that discretion has to be exercised in strict adherence to the principles of the rule of law and good governance.

15. Specifically, the four Commissioners are required to discharge the functions of the holder of an independent constitutional commission under Article 251(1) of the Constitution of Kenya, 2010 *inter alia* with utmost competence, strict adherence to the Constitution devoid of any gross misconduct and violation of the Constitution including contravention of Chapter Six on integrity and leadership.

16. Article 88(2)(i) of the Constitution abhors and prohibits a person from holding the position of a Commissioner of the Commission if that person has, in the past five years, preceding his/her appointment as a Commissioner of the Commission held office or stood for election as a member of Parliament or of a county assembly.

**PARTICULARS OF VIOLATION OF THE CONSTITUTION, GROSS MISCONDUCT
AND INCOMPETENCE OF THE FOUR COMMISSIONERS.**

17. TO THE EXTENT THAT the four Commissioners staged a dramatic revolt at the eleventh and a half hour on the presidential election results of an election they participated in managing from its inception, supervising and overseeing on reasons advanced by them in their press statements of 15th and 16th August, 2022, the four Commissioners acted in total violation of the Constitutional rule of law and good governance principles enunciated under ARTICLE 10(2) OF THE CONSTITUTION which by and at large constitute a serious violation of the Constitution as well as gross misconduct.

18. TO THE EXTENT THAT that the four commissioners' dramatic revolt on the election results that they had themselves generated through the rigorous verification, collation, tallying and tabulation, the four commissioners' individual and collective conduct amounted to a constitutional coup in violation of the provisions of ARTICLE 3(2) OF THE CONSTITUTION.

19. TO THE EXTENT THAT Commissioner Irene Masit was appointed as a commissioner to the Commission having stood for election in 2017, being within FIVE years preceding her appointment as a Commissioner for IEBC, Irene Masit's appointment as an IEBC Commissioner was unlawful,

unconstitutional and illegal for being in gross violation of *Article 88(2) of the Constitution of Kenya, 2010*.

20. TO THE EXTENT THAT the four Commissioners reckoned that the results as were announced were opaque because of the Chairperson's failure to include the rejected votes in the computation of the constitutional threshold of 50% + 1 posited under *Article 138(4)(a) of the Constitution of Kenya, 2010* despite the Supreme Court's pronouncement on the issue in the case of *Raila Odinga & 5 Others -v- Independent Electoral and Boundaries Commission & 4 Others (Petition 5,3 & 4 of 2013 (Consolidated) [2013] KESC 6 (KLR)* that a rejected vote/ballot is not a valid vote/ballot, the four Commissioners' conduct demonstrated utter incompetence and gross misconduct in the performance of the duties of their office.

21. TO THE EXTENT THAT the four Commissioners' conduct by way of their pleadings and submissions, both oral and written, at the hearing of the Presidential Election Petitions before the Supreme Court amounted to a petition to the Supreme Court for the nullification of the results of an election that they actively participated in managing, supervising and conducting, the four Commissioners' conduct amounted to concerted external efforts, partisan in nature, to ensure that no declaration of results could be made, the said conduct of the four commissioners amounted to gross misconduct and violation of the Constitution contra *Article 81(e)(ii), (iii), (iv) & (v) of the Constitution of Kenya, 2010*.

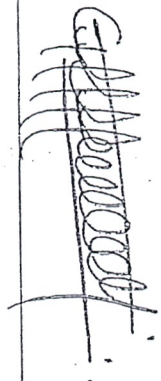
22. The particulars set forth hereinabove out rightly reveals serious violation of the Constitution, gross misconduct and utter incompetence by the four Commissioners.

THEREFORE, the Petitioners reverently pray as follows:-

- a) That this Petition be certified as urgent and dispensed with in the first instance;
- b) That the Honourable House proceed to debate on this petition and consider it fair and justly on its merits and thereafter urgently vote on it;

- c) That depending on the outcome of the vote of the Honourable House on (b) above, this Petition be urgently transmitted to the President for the appointment of a Tribunal to investigate the conducts of and violations committed by the four Commissioners complained of in this Petition.

PETITIONED and DATED at NAIROBI this 19th day of September 2022

NAME OF PETITIONER	FULL ADDRESS	NATIONAL IDENTIFICATION NO./PASSPORT	SIGNATURE
OWUOR STEVE GERRY	5 TH AVENUE OFFICE SUITES, 5 TH NGONG AVENUE, 6 TH FLOOR SUITE NO. 15 TEL.: 0720102393 Email: gerrydebby95@gmail.com	32487760	

ANNEXURE 5:

ADVERTISEMENT



REPUBLIC OF KENYA
13TH PARLIAMENT-FIRST SESSION (2022)
THE NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

In the matter of Consideration by the National Assembly on the Petitions for the removal from office of Commissioners of the Independent Electoral and Boundaries Commission

NOTIFICATION OF THE CONDUCT OF HEARINGS BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

WHEREAS Article 251(2) of the Constitution provides that “a person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground”

WHEREAS on 15th November, 2022, the Hon. Speaker of the National Assembly conveyed Petitions presented by the **Republican Liberty Party, Reverend Dennis Ndwiga Nthumbi, Mr. Geoffrey Langat and Mr. Owour Steve Gerry** seeking the removal from office of **Ms. Juliana Cherera; Ms. Irene Masit; Mr. Justus Nyang’aya; and Mr. Francis Wanderi** as Commissioners of the Independent Electoral and Boundaries Commission (IEBC) on various grounds, including serious violation of the Constitution and other laws; gross misconduct; and incompetence and referred the Petitions to the **Departmental Committee on Justice and Legal Affairs**.

FURTHER WHEREAS Upon receipt of a Petition, Standing Order 230(4) of the National Assembly Standing Orders mandates the Departmental Committee on Justice and Legal Affairs to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution.

NOTING THAT Article 118(1)(b) of the Constitution provides that, “Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”.

IT IS NOTIFIED for the information of the general public that the Departmental Committee on Justice and Legal Affairs shall commence hearings on the four (4) Petitions for the removal of Commissioners of the IEBC as from **Thursday, 24th November, 2022** at the Mini Chamber, 1st Floor, County Hall, Parliament Buildings, Nairobi, as per the Schedule hereunder—

SCHEDULE OF HEARINGS	
Thursday, 24 th November, 2022	
10.00a.m.—11.00a.m.	Petition by the Republican Liberty Party (Hearing of the Petitioner)

11.30a.m.—12.30p.m.	Cross-examination of the Republican Liberty Party
2.00p.m.—3.00p.m.	Petition by the Rev. Dennis Ndwiga Nthumbi (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Rev. Dennis Ndwiga Nthumbi
Friday, 25th November, 2022	
10.00a.m.—11.00a.m.	Petition by Geoffrey Langat (Hearing of the Petitioner)
11.30a.m.—12.30p.m.	Cross-examination of Geoffrey Langat
2.00p.m.—3.00p.m.	Petition by Owuor Steve Gerry (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Owuor Steve Gerry
Monday, 28th November, 2022	
10.00a.m.—11.00a.m.	Response by Ms. Juliana Cherera
11.30a.m.—12.30p.m.	Cross-examination of Ms. Juliana Cherera
2.00p.m.—3.00p.m.	Response by Ms. Irene Masit
3.30p.m.—4.30p.m.	Cross-examination of Ms. Irene Masit
Tuesday, 29th November, 2022	
10.00a.m.—11.00a.m.	Response by Mr. Francis Wanderi
11.30a.m.—12.30p.m.	Cross-examination of Mr. Francis Wanderi
2.00p.m.—3.00p.m.	Response by Mr. Justus Nyang'aya
3.30p.m.—4.30p.m.	Cross-examination of Mr. Justus Nyang'aya

SAMUEL J. NJOROGI
CLERK OF THE NATIONAL ASSEMBLY

21st November 2022

For the Welfare of Society and the just Government of the People

ANNEXURE 6:

**LETTERS FROM THE
CLERK OF THE
NATIONAL
ASSEMBLY INVITING
THE PETITIONERS
AND THE
RESPONDENTS FOR
THE HEARINGS**

REPUBLIC OF KENYA



Telegraphic Address
'Bunge', Nairobi
Telephone 221291
Fax: 243694
E-mail: clerk@parliament.go.ke
When replying please quote

Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

NA/CNA/CORR/2022(264)

17th November 2022

Mr. Owuor Steve Gerry
5th Avenue Office Suites
6th Floor, Suite No. 15
5th Ngong Avenue
NAIROBI.

Tel: 0720102393
Email: gerrydebby@gmail.com

Dear

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF A PETITION FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed your Petition to the National Assembly "*for the removal of Members of a constitutional Commission under Article 251 of the Constitution of Kenya, 2010*" and referred it to the Departmental Committee on Justice and Legal Affairs.

Upon receipt of a Petition, Standing Order 230(4) of the National Assembly Standing Orders mandates the Committee to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution. Once the Committee tables its Report, the House is required to resolve whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution within 10 days.

In its sitting of **16th November, 2022**, the Committee resolved to commence hearings on your Petition and three (3) other Petitions as from **Thursday, 24th November, 2022** at the Mini Chamber, 1st Floor, County Hall, Parliament Buildings, Nairobi, in accordance with the Schedule hereunder—

SCHEDULE OF HEARINGS

Thursday, 24th November, 2022

10.00a.m.—11.00a.m.	Petition by the Republican Liberty Party (Hearing of the Petitioner)
11.30a.m.—12.30p.m.	Cross-examination of the Republican Liberty Party
2.00p.m.—3.00p.m.	Petition by the Rev. Dennis Ndwiga Nthumbi (Hearing of the Petitioner)

3.30p.m.—4.30p.m.	Cross-examination of Rev. Dennis Ndwiga Nthumbi
Friday, 25th November, 2022	
10.00a.m.—11.00a.m.	Petition by Geoffrey Langat (Hearing of the Petitioner)
11.30a.m.—12.30p.m.	Cross-examination of Geoffrey Langat
2.00p.m.—3.00p.m.	Petition by Owuor Steve Gerry (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Owuor Steve Gerry
Monday, 28th November, 2022	
10.00a.m.—11.00a.m.	Response by Ms. Juliana Cherera
11.30a.m.—12.30p.m.	Cross-examination of Ms. Juliana Cherera
2.00p.m.—3.00p.m.	Response by Ms. Irene Masit
3.30p.m.—4.30p.m.	Cross-examination of Ms. Irene Masit
Tuesday, 29th November, 2022	
10.00a.m.—11.00a.m.	Response by Mr. Francis Wanderi
11.30a.m.—12.30p.m.	Cross-examination of by Mr. Francis Wanderi
2.00p.m.—3.00p.m.	Response by Mr. Justus Nyang'aya
3.30p.m.—4.30p.m.	Cross-examination of Mr. Justus Nyang'aya

This is to invite you to attend before the Departmental Committee on Justice and Legal Affairs to present your Petition on **Friday, 25th November, 2022** where the Commissioners shall be at liberty to cross-examine you.

Additionally, you are invited to attend before the Committee on **Monday, 28th November, 2022** and **Tuesday, 29th November, 2022** where you shall be at liberty to cross-examine the Commissioners on their responses. You may attend the hearings in person or by legal representative.

TAKE NOTE that should you choose not to attend before the Committee on the dates and time specified in this invitation, the Committee, and thereafter Parliament, shall proceed with this matter in accordance with the Constitution and the law, without further reference to you.

Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalassembly@parliament.go.ke.

Yours


SAMUEL NJOROGE

CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



Telegraphic Address
'Bunge', Nairobi
Telephone 221291
Fax: 243694
E-mail: clerk@parliament.go.ke

Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

When replying please quote

NA/CNA/CORR/2022(263)

17th November 2022

The Republican Liberty Party
P.O Box 20148 - 00100
NAIROBI.

Attn: Mr. Zachariah M. Matayo

Dear

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF A PETITION FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed your Petition dated 13th October, 2022 and referred it to the Departmental Committee on Justice and Legal Affairs.

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Yours



SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

When replying please quote

NA/CNA/CORR/2022(262)

17th November 2022

Reverend Dennis Ndwiga Nthumbi
P.O Box 60024 - 00200
NAIROBI.

Dear

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF A PETITION FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed your Petition to the National Assembly "*for the removal of four IEBC Commissioners under the Constitution*" and referred it to the Departmental Committee on Justice and Legal Affairs.

Upon receipt of a Petition, Standing Order 230(4) of the National Assembly Standing Orders mandates the Committee to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution. Once the Committee tables its Report, the House is required to resolve whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution within 10 days.

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Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalassembly@parliament.go.ke.

Yours


SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



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E-mail: clerk.@parliament.go.ke

Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

When replying please quote

17th November 2022

NA/CNA/CORR/2022(261)

Geoffrey Langat
P.O Box 26903- - 00100
NAIROBI.

Dear

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF A PETITION FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed your Petition to the National Assembly "*on the removal of four Members of Independent Electoral and Boundaries Commission*" and referred it to the Departmental Committee on Justice and Legal Affairs.

Upon receipt of a Petition, Standing Order 230(4) of the National Assembly Standing Orders mandates the Committee to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution. Once the Committee tables its Report, the House is required to resolve whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution within 10 days.

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This is to invite you to attend before the Departmental Committee on Justice and Legal Affairs to present your Petition on **Friday, 25th November, 2022** where the Commissioners shall be at liberty to **cross-examine** you.

Additionally, you are invited to attend before the Committee on **Monday, 28th November, 2022** and **Tuesday, 29th November, 2022** where you shall be at liberty to **cross-examine** the Commissioners on their responses. You may attend the hearings in person or by legal representative, or both.

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Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalassembly@parliament.go.ke.

Yours



SAMUEL NJOROGE

CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

When replying please quote

NA/CNA/CORR/2022(253)

16th November 2022

Mr. Francis Wanderi
Commissioner,
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.



Dear Sir,

RE: NOTIFICATION OF PETITIONS PRESENTED FOR YOUR REMOVAL FROM
OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF
THE PETITIONS

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed Petitions presented by the Republican Liberty Party, Reverend Dennis Ndwiga Nthumbi, Mr. Geoffrey Langat and Mr. Owour Steve Gerry and referred them to the Departmental Committee on Justice and Legal Affairs.

The four (4) Petitions (Copies enclosed) seek your removal from office on various grounds, including serious violation of the Constitution and other laws, gross misconduct and incompetence, particulars of which are contained in the Petitions.

Upon receipt of a Petition, Standing Order 230(4) of the National Assembly Standing Orders mandates the Committee, to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution. Once the Committee tables its Report, the House is required to resolve whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution within 10 days.

In its sitting of 16th November, 2022, the Committee resolved to commence hearings on the four (4) Petitions as from Thursday, 24th November, 2022 at the Mini Chamber, 1st Floor, County Hall, Parliament Buildings, Nairobi, in accordance with the Schedule hereunder—

SCHEDULE OF HEARINGS	
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11.30a.m.—12.30p.m.	Cross-examination of by Mr. Francis Wanderi
2.00p.m.—3.00p.m.	Response by Mr. Justus Nyang'aya
3.30p.m.—4.30p.m.	Cross-examination of Mr. Justus Nyang'aya

This is to notify you of the referral of the aforesaid Petitions and invite you to attend before the Departmental Committee on Justice and Legal Affairs during the presentation of the Petitions on Thursday, 24th November, 2022 and Friday, 25th November, 2022 where you shall be at liberty to cross-examine the Petitioners.

Additionally, you are invited to attend before the Committee on Monday, 28th November, 2022 and Tuesday, 29th November, 2022 to present your response. You may attend the hearings in person or by legal representative, or both, and may be cross-examined on any response provided. In the event you intend to submit a written response to the Committee on any matter, kindly do provide fifteen (15) copies of the response at least one (1) day in advance to the Office of the Clerk of the National Assembly. A soft copy of any response should also be sent to clerk.nationalassembly@parliament.go.ke.

TAKE NOTE that should you choose not to attend before the Committee on the dates and time specified in this invitation, the Committee, and thereafter Parliament, shall proceed with this matter in accordance with the Constitution and the law, without further reference to you.

Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalassembly@parliament.go.ke.

Yours



SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

Encl.

REPUBLIC OF KENYA



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Telephone 221291
Fax: 243694
E-mail: clerk@parliament.go.ke

Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 - 00100
NAIROBI, Kenya

When replying please quote
NA/CNA/CORR/2022(251)

15th November 2022

Ms. Irene Masit
Commissioner,
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.



Dear *M. Masit*,

RE: NOTIFICATION OF PETITIONS PRESENTED FOR YOUR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF THE PETITIONS

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed Petitions presented by the Republican Liberty Party, Reverend Dennis Ndwiga Nthumbi, Mr. Geoffrey Langat and Mr. Owour Steve Gerry and referred them to the Departmental Committee on Justice and Legal Affairs.

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Yours



SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

Encl.

REPUBLIC OF KENYA



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NAIROBI, Kenya

When replying please quote

NA/CNA/CORR/2022(252)

16th November 2022

Ms. Juliana Cherera
Vice-Chairperson
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.



Dear *Madam,*

RE: NOTIFICATION OF PETITIONS PRESENTED FOR YOUR REMOVAL FROM
OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL
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Friday, 25 th November, 2022	
10.00a.m.—11.00a.m.	Petition by Geoffrey Langat (Hearing of the Petitioner)
11.30a.m.—12.30p.m.	Cross-examination of Geoffrey Langat
2.00p.m.—3.00p.m.	Petition by Owuor Steve Gerry (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Owuor Steve Gerry
Monday, 28 th November, 2022	
10.00a.m.—11.00a.m.	Response by Ms. Juliana Cherera
11.30a.m.—12.30p.m.	Cross-examination of Ms. Juliana Cherera
2.00p.m.—3.00p.m.	Response by Ms. Irene Masit
3.30p.m.—4.30p.m.	Cross-examination of Ms. Irene Masit
Tuesday, 29 th November, 2022	
10.00a.m.—11.00a.m.	Response by Mr. Francis Wanderi
11.30a.m.—12.30p.m.	Cross-examination of by Mr. Francis Wanderi
2.00p.m.—3.00p.m.	Response by Mr. Justus Nyang'aya
3.30p.m.—4.30p.m.	Cross-examination of Mr. Justus Nyang'aya

This is to notify you of the referral of the aforesaid Petitions and invite you to attend before the Departmental Committee on Justice and Legal Affairs during the presentation of the Petitions on Thursday, 24th November, 2022 and Friday, 25th November, 2022 where you shall be at liberty to cross-examine the Petitioners.

Additionally, you are invited to attend before the Committee on Monday, 28th November, 2022 and Tuesday, 29th November, 2022 to present your response. You may attend the hearings in person or by legal representative, or both, and may be cross-examined on any response provided. In the event you intend to submit a written response to the Committee on any matter, kindly do provide fifteen (15) copies of the response at least one (1) day in advance to the Office of the Clerk of the National Assembly. A soft copy of any response should also be sent to clerk.nationalassembly@parliament.go.ke.

TAKE NOTE that should you choose not to attend before the Committee on the dates and time specified in this invitation, the Committee, and thereafter Parliament, shall proceed with this matter in accordance with the Constitution and the law, without further reference to you.

Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalassembly@parliament.go.ke.

Yours



SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

Encl.

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 221291
Fax: 243694
E-mail: clerk@parliament.go.ke



Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

When replying please quote

NA/CNA/CORR/2022(254)

16th November 2022

Mr. Justus Nyang'aya
Commissioner,
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.



Dear Sir,

RE: NOTIFICATION OF PETITIONS PRESENTED FOR YOUR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF THE PETITIONS

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed Petitions presented by the Republican Liberty Party, Reverend Dennis Ndwiga Nthumbi, Mr. Geoffrey Langat and Mr. Owour Steve Gerry and referred them to the Departmental Committee on Justice and Legal Affairs.

The four (4) Petitions (Copies enclosed) seek your removal from office on various grounds, including serious violation of the Constitution and other laws, gross misconduct and incompetence, particulars of which are contained in the Petitions.

Upon receipt of a Petition, Standing Order 230(4) of the National Assembly Standing Orders mandates the Committee, to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution. Once the Committee tables its Report, the House is required to resolve whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution within 10 days. In its sitting of 16th November, 2022, the Committee resolved to commence hearings on the four (4) Petitions as from Thursday, 24th November, 2022 at the Mini Chamber, 1st Floor, County Hall, Parliament Buildings, Nairobi, in accordance with the Schedule hereunder—

SCHEDULE OF HEARINGS	
Thursday, 24 th November, 2022	
10.00a.m.—11.00a.m.	Petition by the Republican Liberty Party (Hearing of the Petitioner)
11.30a.m.—12.30p.m.	Cross-examination of the Republican Liberty Party
2.00p.m.—3.00p.m.	Petition by the Rev. Dennis Ndwiga Nthumbi (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Rev. Dennis Ndwiga Nthumbi
Friday, 25 th November, 2022	
10.00a.m.—11.00a.m.	Petition by Geoffrey Langat (Hearing of the Petitioner)
11.30a.m.—12.30p.m.	Cross-examination of Geoffrey Langat
2.00p.m.—3.00p.m.	Petition by Owuor Steve Gerry (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Owuor Steve Gerry
Monday, 28 th November, 2022	
10.00a.m.—11.00a.m.	Response by Ms. Juliana Cherera
11.30a.m.—12.30p.m.	Cross-examination of Ms. Juliana Cherera
2.00p.m.—3.00p.m.	Response by Ms. Irene Masit
3.30p.m.—4.30p.m.	Cross-examination of Ms. Irene Masit
Tuesday, 29 th November, 2022	
10.00a.m.—11.00a.m.	Response by Mr. Francis Wanderi
11.30a.m.—12.30p.m.	Cross-examination of by Mr. Francis Wanderi
2.00p.m.—3.00p.m.	Response by Mr. Justus Nyang'aya
3.30p.m.—4.30p.m.	Cross-examination of Mr. Justus Nyang'aya

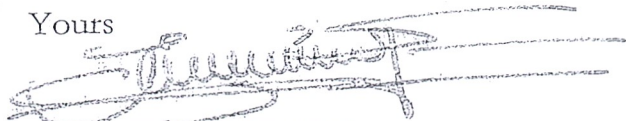
This is to notify you of the referral of the aforesaid Petitions and invite you to attend before the Departmental Committee on Justice and Legal Affairs during the presentation of the Petitions on Thursday, 24th November, 2022 and Friday, 25th November, 2022 where you shall be at liberty to cross-examine the Petitioners.

Additionally, you are invited to attend before the Committee on Monday, 28th November, 2022 and Tuesday, 29th November, 2022 to present your response. You may attend the hearings in person or by legal representative, or both, and may be cross-examined on any response provided. In the event you intend to submit a written response to the Committee on any matter, kindly do provide fifteen (15) copies of the response at least one (1) day in advance to the Office of the Clerk of the National Assembly. A soft copy of any response should also be sent to clerk.nationalassembly@parliament.go.ke.

TAKE NOTE that should you choose not to attend before the Committee on the dates and time specified in this invitation, the Committee, and thereafter Parliament, shall proceed with this matter in accordance with the Constitution and the law, without further reference to you.

Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalassembly@parliament.go.ke.

Yours



SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

Encl.

ANNEXURE 7:

CORRESPONDENCES



Telegram "Bunge"
Telephone: +254 20 2221 291
+254 20 2848 000

E-mail: speaker.nationalassembly@parliament.go.ke PARLIAMENT

Speaker's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842-00100
Nairobi, Kenya

OFFICE OF THE SPEAKER NATIONAL ASSEMBLY

KNA-MW/2022-13/022

24th November, 2022

The Hon. Junet Mohamed, CBS, MP.
Minority Party Whip, National Assembly
Parliament Buildings,
P. O. Box 41842 – 00100
NAIROBI.

Dear Sir,

RE: REQUEST FOR THE SPEAKER'S RULING IN THE MATTER OF THE CONSIDERATION BY THE NATIONAL ASSEMBLY ON THE THREE PETITIONS FOR THE REMOVAL FROM OFFICE OF THE COMMISSIONERS ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above matter and your letter dated 23rd November, 2022 refer.

I have noted your request for a ruling over matters relating to the consideration of the four (4) Petitions that I conveyed to the Departmental Committee on Justice and Legal Affairs on 15th November, 2022.

Standing Order 196 of the National Assembly Standing Orders Procedure provides that the procedure in select committees should be, as nearly as possible, the same as that in the Committee of the whole House *except as and to the extent to which the chairperson may otherwise direct for the purpose of facilitating full consideration and discussion of a matter referred to a Committee.*

In accordance with settled parliamentary practice, a Committee Chairperson is mandated to guide the Committee on any procedural question that arises within a Committee.

Further, as you are aware, it is considered imprudent for the Speaker or a Member presiding in the House to rule on a matter under **active** consideration by a Committee at the **plenary** of the House. Given your position as part of the Leadership of the House, I have taken the liberty to offer guidance to you on the concerns raised by way of this letter. Indeed, Parliamentary practice requires the Speaker to **refrain** from making rulings on matters active in a Committee of the House, unless in exceptional instances such as questions of privilege or grave disorder as may be reported in the House.

I have had sight of the document titled “*RULES OF PROCEDURE ON MATTERS RELATING TO THE PETITIONS FOR THE REMOVAL OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION*” containing twelve (12) rules under the following headings—

- a) Citation
- b) Interpretation
- c) Speaker’s guidelines
- d) Conduct of Members
- e) Duties of Chairperson
- f) Schedule of hearings
- g) Attendance by non-members of the Committee
- h) Public access to the meetings of the Committee
- i) Allocation of time to Parties
- j) Decisions of the Committee
- k) Amendment of Rules of Procedure
- l) Application of the Constitution, Statute and precedents

You will recall that, in conveying the four (4) Petitions to the Committee, I did outline several guidelines to be observed by the Committee to ensure that the quasi-judicial proceedings adhere to the requirements of Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act, 2015. I also did urge the Committee to borrow a leaf from the conduct of **quasi-judicial proceedings** from comparative parliamentary jurisdictions, including the Senate in guiding further or other details not expressly covered under the Standing Orders. In addition, I reminded the Committee of the timelines prescribed under Standing Order 230 and highlighted the need for the Committee to adopt a timetable for its consideration of the Petitions.

The Rules severally cite existing provisions of the Standing Orders and require the Chairperson to be guided by the Constitution, the Fair Administrative Action Act, 2015 and parliamentary usages, forms, precedents, customs, procedures and traditions in resolving procedural matters not covered by the Standing Orders. **I therefore do not find the content of the Rules unusual or objectionable in any way.** Indeed, they are in keeping with my guidance and established parliamentary practice and merely augment the Standing Orders in the conduct of proceedings in which the House has encountered challenges in navigating.

I note that if adopted by the Committee, the Rules shall be limited in their application only to the proceedings of the Committee in the instant hearings and they are not to be treated as an amendment of the Standing Orders.

Please accept, dear Leader, the assurances of my highest consideration.

THE RT. HON. (SEN.) MOSES F.M. WETANG'ULA, EGH, M.P.
SPEAKER OF THE NATIONAL ASSEMBLY

Cc: The Hon. James Opiyo Wandayi, MP
Leader of the Minority Party
National Assembly, Parliament Buildings
Nairobi

✓ The Hon. George Murugara, MP
Chairperson
Departmental Committee on Justice and Legal Affairs
National Assembly, Parliament Buildings
Nairobi

The Clerk of The National Assembly,
Parliament Buildings
Nairobi

MW
SNA



① CNA
Advise on this
SNA
23/11/22

Hon. Junet Mohamed, CBS, MP.
Sunu East Constituency
Minority Whip - National Assembly

Parliament Buildings
P. O. Box 41842 - 00100 Nairobi, Kenya

Tel: +254 20 2221291
E-mail: Junet.mohamed@gmail.com

KNA-MW/2022-13/022

23rd November, 2022

The Rt. Hon. Moses M. Wetangula, EGH, MP
Speaker of the National Assembly
Parliament Buildings
NAIROBI

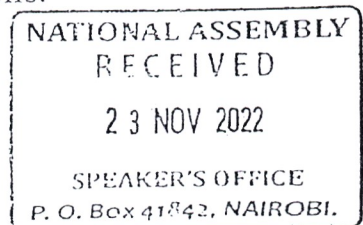
② Mr. Peter L C
Let 2/11/22,
writing.
23/11

Dear Sir,

REQUEST FOR THE SPEAKER'S RULING IN THE MATTER
OF THE CONSIDERATION BY THE NATIONAL ASSEMBLY
ON THE THREE PETITIONS FOR THE REMOVAL FROM
OFFICE OF THE COMMISSIONERS OF THE INDEPENDENT
ELECTORAL AND BOUNDARIES COMMISSION.

Hon. Speaker, I write in my capacity as the Minority Whip and member of the Departmental Committee on Justice and Legal Affairs concerning the manner in which the Committee has proceeded to deliberate on preliminary issues regarding Rules and Procedure to be adopted in the hearing of the three Petitions for the removal of Commissioners of the Independent Electoral and Boundaries Commission (IEBC) committed to the committee vide the Communication from the Chair dated Tuesday 15th November 2022.

The Committee has adopted what it terms as Rules and Procedure for Departmental Committee on Justice and Legal Affairs of the National Assembly relating to the hearing of the three petitions.



Mr. Speaker, the following issues are of grave concern to me for which I seek your determination and direction:

1. Whether a departmental committee functioning under Standing Order 216 (4), (5), as read with Standing Order 230 has the legal authority or mandate to make Rules and Procedure on a matter before it without reference to the House Rules and Procedure Committee.
2. Whether the same Rules and Procedure made by the departmental committee are inconsistent with Article 117 (1) of the Constitution of Kenya and Standing Orders governing rules of debate to the extent that the rules purport to limit or fetter Freedom of Speech of Member of Parliament in Committee guaranteed by the Constitution of Kenya and Standing Orders.
3. Whether, in the absence of a specific legislation, a departmental committee has legal authority to make rules *suo moto*.
4. Whether the Rules are in excess of jurisdiction of the Committee and therefore invalid to the extent that they are inconsistent with Fair Administrative Action Act (No.4 of 2015).
5. Whether the Rules purportedly drawn by the Departmental Committee on Justice and Legal Affairs makes the Chair of the Committee on Justice and Legal Affairs an imperial or executive chairman to the detriment of other members all of whom are his peers.
6. Whether the purported Rules and Procedure as drafted by the Departmental Committee on Justice and Legal Affairs amounts to an unlawful amendment of the Standing Orders without the input of the House Rules and Procedure Committee.
7. Whether the rules purported to be drawn by the Departmental Committee meets the standard of parliamentary legislative practice either by custom, tradition, usage in Kenya or any known comparative jurisdiction.
8. Whether in the Communication from the Chair dated Tuesday November 15, 2022; the Speaker ever instructed the Committee to make Rules and Procedure for the conduct of the petition.

9. Whether the Rules made by the Departmental Committee meets the legislative policy threshold of standardization and uniformity in the general legislative formulation in parliamentary practice in Kenya.
10. Whether the Rules and Procedure drawn by the Departmental Committee on Justice and Legal Affairs shall be limited to the hearing of the current Petitions only or shall set a precedent for universal application to all Parliamentary Committees in similar matters concerning general petitions or removal of Constitutional Office Holders.
11. Whether Rules and Procedure whose foundation is not grounded on any statute law will adversely prejudice the hearing of the Petitions.
12. Whether the Standing Orders are complete in themselves and self-executing as comprehensive Rules and Procedure in Departmental Committees.

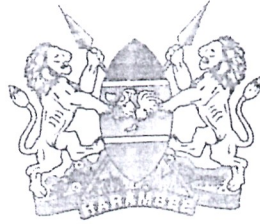
Mr. Speaker, this matter is urgent as the Committee has prepared a Schedule for the hearing of the Petitions beginning tomorrow (Thursday November 24th 2022) and, if not disposed of instantly, the rights of the Petitioners and Respondents will be jeopardized, parliamentary practice will suffer irreparable damage and an unusual precedent will be set that may lead to confusion in committee work in the National Assembly.



Hon. Junet Mohamed, CBS, MP
Suna-East Constituency
Minority Whip-National Assembly

Cc: Hon. James Opiyo Wandayi, MP
Minority Leader, NA

REPUBLIC OF KENYA



Clerks Chambers
National Assembly
Parliament Buildings
P. O. Box 4184-200100
NAIROBI, KENYA

Telegraphic Address
Bunge, Nairobi
Telephone 2221291
Fax: 2243694
Email: cna@parliament.go.ke
Website: www.parliament.go.ke

OFFICE OF THE CLERK – NATIONAL ASSEMBLY

When replying please quote
Ref: NA./CNA/CORR/2022 (296)
Your Ref: C/5957/22

25th November, 2022

Rachier & Amollo LLP
Mayfair Centre, 5th Floor
Ralph Bunche Road
P. O. Box 55645 – 00200
NAIROBI.
lawtechs@rachieradvs.co.ke

"ADVANCE COPY by email"

Attn: Dr. J. O. Arwa

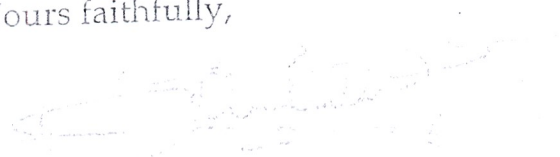
Dear Sir,

RE: IMPEACHMENT PROCEEDINGS AGAINST OUR CLIENT – JUSTUS
NYANG'AYA

The above matter refers.

We advise that we have conveyed your letter to the Departmental Committee on Justice and Legal Affairs for urgent consideration of the request for the Ruling and the Hansard of its proceedings.

Yours faithfully,


SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA



Telegraphic Address
Bunge, Nairobi
Telephone 2221291
Fax: 2243694
Email: cna@parliament.go.ke
Website: www.parliament.go.ke



Clerks Chambers
National Assembly
Parliament Buildings
P. O. Box 4184200100
NAIROBI, KENYA

OFFICE OF THE CLERK – NATIONAL ASSEMBLY

When replying please quote
REF: Ref: NA./CNA/CORR/2022 (310)
Your Ref: ACA/NA/1/2022

29th November, 2022

Apollo & Company Advocates,
B2 Kindaruma Court,
Kindaruma Road, Kilimani,
P. O. Box 2073 – 00100,
NAIROBI.
apollo@aca.co.ke

"ADVANCE COPY by email"

Attn: Mr. Apollo Mboya, HSC

Dear Sir,

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM OFFICE OF
COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS

The above matter refers.

I acknowledge receipt of your letter dated 29th November, 2022 copied to the Chairperson of the Departmental Committee on Justice and Legal Affairs and received via email, today at 7.28 am.

I regret that my delay in endorsement of the copies of the *Hansard* and the minutes of the Committee resulted in you receiving them at 5.32pm yesterday, leading to your loss of at least five (5) hours to prepare for your client's response.

I am directed to inform you that the Committee has considered the matter and taken the view that the Respondent, Commissioner Juliana Cherera, be compensated with a similar or slightly larger allocation of time to respond. The Committee has therefore adjourned its hearing scheduled for today morning at 8.00am for the response of Commissioner Juliana Cherera to today, Tuesday 29th November at 4.00pm.

This letter acts as Notice of the hearing.

Kindly advise your client accordingly.

Yours faithfully,

A handwritten signature in dark ink, appearing to read "Samuel Njoroge".

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

Our Ref M/0253/001

Date: 18th November, 2022

Your Ref: NA/CNA/CORR/2022(251)

Samuel Njoroge,
Clerk,
National Assembly,
Parliament Buildings,
NAIROBI.



Dear Sir,

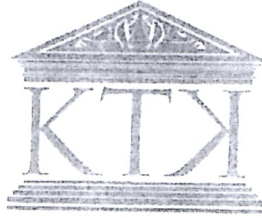
**RE: IMPEACHMENT PROCEEDINGS
REV. DENNIS N. NTHUMBI
GEOFFREY LANGAT
OWUOR STEVE GERRY
-AND-
COMMISSIONER IRENE MASIT**

We refer to the above and ours dated 17.11.22.

Our Client has given us a **bundle** of documents which she was served on 17.11.22.

The bundle had the following:-

- i. Communication of the Speaker to the House titled "Conveyance of Petitions".
- ii. Petition by Republican Liberty Party signed by Zachariah M. Matayo as Chairman of the Party. The Petition doesn't have any Affidavit or annexures.
- iii. Petition by Rev. Dennis Nthumbi with a Six Paragraph Affidavit. There are no annexures.
- iv. Petition by Geoffrey Langat. There is no Affidavit or annexures.



ADVOCATES, COMMISSIONERS FOR OATHS, NOTARIES PUBLIC

- v. **Petition by Owuor Steve Gerry.** There is no Affidavit or annexures.

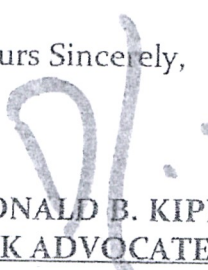
Pursuant the applicable provisions of *The Constitution, Fair Administrative Action Act* and established Case Law confirm that the above documents as we have described are the **complete** set filed by the **Four Petitioners**.

Further, pursuant to the said laws, let us have copies of:-

- i. Your current Standing Orders Booklet.
- ii. All decisions made by the House Committees and full House in respect of Petitions to remove Constitutional Office Holders since 2013 to-date.

We need the above information to enable us prepare for the proceedings of 28.11.22.

Yours Sincerely,


DONALD B. KIPKORIR
KTK ADVOCATES

Cc: Irene Masit,
Commissioner,
Independent Electoral &
Boundaries Commission (IEBC),
Anniversary Towers, 6th Floor,
University Way,
NAIROBI.

DBK/sn



KTK ADVOCATES
COMMERCIAL - CORPORATE LAW PRACTICE

(MEMBER OF  AN INTERNATIONAL LEGAL NETWORK OF LEADING INDEPENDENT BUSINESS LAW FIRMS
LEGALINK

Our Ref M/0253/001

Date: 30th November, 2022

Your Ref: NA/CNA/CORR/2022(275)

Hon. Gitonga Murugara,
Chairman,
Departmental Committee on Justice
& Legal Affairs,
National Assembly,
Parliament Buildings,
NAIROBI.



Samuel Njoroge,
Clerk,
National Assembly,
Parliament Buildings,
NAIROBI.

Dear Sirs,

**RE: DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS
REPUBLICAN LIBERTY PARTY
REV. DENNIS N. NTHUMBI
GEOFFREY LANGAT
OWUOR STEVE GERRY
~VERSUS~
COMMISSIONER IRENE MASIT**

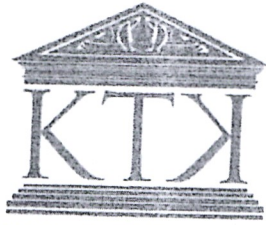
We refer to the above matter and our previous correspondence.

Kindly and urgently, let us have the following information:-

- i. Extract of the Recording Book that received the **Four Petitions**. We want copies of each page that has the receipt entry records of each Petition which must indicate name of person or courier who delivered the Petition and the person who received.

IFLR RECOGNISED
FIRM

IFLR RECOGNISED
FIRM



ADVOCATES, COMMISSIONERS FOR OATHS, NOTARIES PUBLIC

- ii. Postal address plus postal code, telephone number and e-mail address of each of the Four Petitioners, which must be registered in their names.
- iii. Hansard Report of the Committees proceedings from the time it was seised of the Four Petitions until its final recommendations/Report and the annexures to the Report to the whole House.

We await the above information and copies on completion of your proceedings but before you deliver to the whole House and/or concurrently.

We await the above response before the whole House considers the Report.

Yours Sincerely,

DONALD B. KIPKORIR
KTK ADVOCATES

Cc: Hon. Irene Masit,
Commissioner,
Independent Electoral &
Boundaries Commission (IEBC),
Anniversary Towers, 6th Floor,
University Way,
NAIROBI.

DBK/sn



• ADVOCATES • COMMISSIONERS FOR OATHS • NOTARIES PUBLIC

PARTNERS

A.D.O Rachier LLB (Dar) LLM (Nbi)
* Otiende Amollo LLB (Nbi) LLM (Nbi) Litt.D, CPM
J. Okome Arwa LLB (Nbi) LLM (Nbi)
Francis Olalo LLB (Goa) CPS (K)
Stephen Ligunya LLB (Nbi) LLM (Nbi)
Alvin Rachier LLB (Wrk) LLM (Ucl)

ASSOCIATES

Jean Ogolla LLB (Moi) MA-ICM (Nbi)
Kevin Wakwaya LLB (Moi) CPM
Ezekiel Munyua LLB (Mak)
William Ongoro LLB (KU)
Marren Adunga LLB (KU)
Rodney Amollo LLB (Nbi)
Samantha Mangla LLB (CUEA)
Grace Maina LLB (JKUAT) ACIARb
Bryson Ometo LLB (Moi)

Your Ref:

Our Ref:

Date:

TBA

C/5957/22

29th November 2022

The Clerk
National Assembly
Parliament Buildings
Nairobi.

Dear Sir,

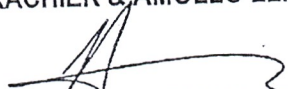
RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N. NTHUMBI, GEOFFREY
LANGAT AND OWUOR STEVE GERRY AGAINST OUR CLIENT – JUSTUS NYANG'AYA

We refer to the above matter and to the ruling given by the Chairman, Departmental Committee of Justice and Legal Affairs to the effect that our client can now call witnesses, and adduce evidence in his defence and wish to advise that our client intends to call a number of witnesses, some of whom will require witness summons, which are yet to be applied for. Accordingly, we are requesting for a period of **FOURTEEN (14) DAYS** which we believe will be sufficient.

We should therefore be grateful if you would kindly allow our client to present his defence to the four petitions on **13th December 2022**. We believe that it is possible for the Committee to seek additional time as permitted by the provisions of Standing Orders No. 256A of the Parliamentary Standing Orders.

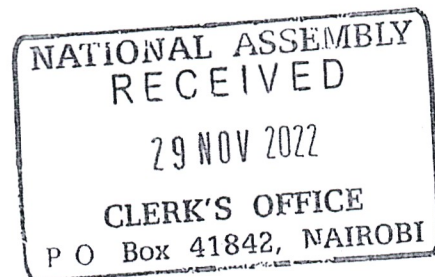
Yours faithfully,

RACHIER & AMOLLO LLP


DR. JOTHAM OKOME ARWA

lawtechs@rachieradvs.co.ke

Cc: The Speaker, National Assembly
Cc: The Majority Leader, National Assembly
Cc: The Minority Leader, National Assembly
Cc: The Chairperson, Justice & Legal Affairs Committee
Cc: Each Member of the Justice and Legal Affairs Committee.

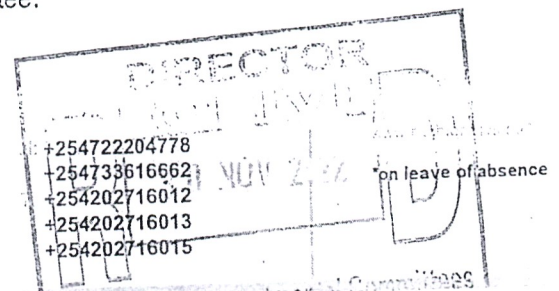


Mayfair Centre, 5th Floor
Ralph Bunche Road
P O Box 55645 – 00200
Nairobi, Kenya

E: lawtechs@rachieradvs.co.ke,

VAT REG NO. 0185055T
P.O. NO. P051222196B

WHEN REPLYING PLEASE
QUOTE OUR REFERENCE





Apollo & Co. Advocates

Notaries & Company Secretaries

Email: apollo@aca.co.ke

Website: www.aca.co.ke

(+254) 733725482, 770473800

B2 Kindaruma Court,

Kindaruma Road-Kilimani

P.O. Box 2873-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022

Your Ref: NA/CNA/CORR/2022(310)

Date: 29th November 2022

Hon. Murungara George Gitonga, MP
Chairperson
Justice and Legal Affairs Committee
National Assembly
Parliament Buildings
P.O. Box 45371-01000
NAIROB

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box 45371-01000
NAIROBI

Advance Copy via

angelajane@nyoya.com

Dear Sirs,

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM
OFFICE OF COMMISSIONERS OF THE INDEPENDENT
ELECTORAL AND BOUNDARIES COMMISSION BY THE
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS

We acknowledge receipt of the letter of today from the clerk admitting delay in endorsement of the copies of Hansard and minutes, which resulted, to the same being sent to us via email at 5.32 pm yesterday. We only accessed the email this morning at 7.00 am upon reporting to office and therefore we lost in excess of 20 hours from 11.00 am yesterday to 7.00 am today.

We thank the Departmental Committee most profusely for understanding the circumstances and for adjourning the morning session to 4.00 pm today. However, the adjournment of the committee only compensates eight (8) hours of the constraining time that the Departmental Committee had directed for four client Commissioner Juliana Cherera to file her responses to the four Petitions.

Even with the further squeezed time granted by the Departmental Committee, the undersigned had a court matter from 10.00 am which I had to attend to after the initially scheduled morning appearance before the Departmental Committee.

Due to the delay to furnish us with documents as ordered by the Departmental Committee, we were been unable to take instructions from our client yesterday during the day. After which we would have burnt the midnight oil to work on a response for our scheduled appearance before the Departmental Committee on Justice and Legal Affairs Committee at 8.00 am today.

In view of the above and the desire of our client to participate, we ask the Honourable Committee to grant us **seven (7)** days to enable us take instructions from the client and file documents for consideration of the Committee.

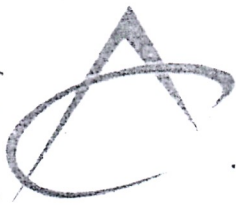
We would appreciate that this letter is placed on record of the proceedings of the Departmental Committee and hope that our reasonable request will be granted.

Yours faithfully,
Apollo & Company Advocates



APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client.



Apollo & Co. Advocates

Attorneys, Notaries & Company Secretaries

Email: apollo@aca.co.ke

Website: www.aca.co.ke

(+254) 733725482, 770473800

B2 Kindaruma Court,

Kindaruma Road-Kilimanjaro

P.O. Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022

Your Ref: NA/DDC/JLAC/2022/004

Date: 29th November 2022

Hon. Murungara George Gitonga, MP
Chairperson
Justice and Legal Affairs Committee
National Assembly
Parliament Buildings
P.O. Box 45371-01000
NAIROBI

Samuel Njoroge,
Clerk of the National Assembly
Clerks Chambers
National Assembly
Parliament Buildings
P.O. Box 45371-01000
NAIROBI

Advance Copy via
ena@parliament.go.ke, cwulala@gmail.com

Dear Sirs,

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM
OFFICE OF COMMISSIONERS OF THE INDEPENDENT
ELECTORAL AND BOUNDARIES COMMISSION BY THE
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS

We refer to the directives of the Departmental Committee on Justice and Legal Affairs Committee that we be furnished with the requested Ruling and Hansard Reports immediately after the morning session of yesterday 28th November 2022 for us to appear before the Committee today 29th November 2022 at 8.00 am.

The undersigned in compliance stood in wait for the documents within the Mini Chamber, County Hall for several hours until I was informed to leave because the Clerk of the National Assembly must endorse and forward the documents officially.

By yesterday 5.00 pm. I had not been furnished with the documents only for me to check my email this morning to find the documents forwarded by douglaskatho@gmail.com on 28th November 2022 at 5:32:01 pm well past office hours. Attached find the email with time stamp.

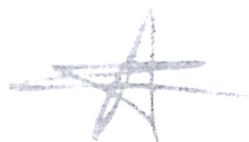
It is now manifestly evident that, there is an elaborate machinations to ensure that we are denied adequate time to prepare a response of our client **Commissioner Juliana Cherera** who we could not consult for instructions on the said documents.

In the circumstances and having been denied a ten (10) day adjournment of the proceedings to facilitate fair hearing including adequate time and facilities to prepare a response, we regret that we shall not participate further in the proceedings before the Honourable Departmental Committee.

We would appreciate that this letter and its attachment is placed on record of the proceedings of the Departmental Committee.

Yours faithfully,

Apollo & Company Advocates



APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client.



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

Telegraphic Address
'Bunge', Nairobi
Tel: +254-020-2848000
Fax: +254-020-2243694
E-mail: cna@parliament.go.ke
www.parliament.go.ke

Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

Ref: NA/DDC/JLAC/2022/004

28th November 2022

Apollo & Co. Advocates
Commissioner for Oaths, Notaries & Company Secretaries
Email: Apollo@aca.co.ke, Website: www.aca.co.ke
B2 Kindaruma Court, Kindaruma Road-Kilimanjaro
P.O. Box 2073-00100 Nairobi
NAIROBI.

Car Apollo & Co,

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

The above matter refers

During the Departmental Committee on Justice and Legal Affairs, Sitting on 28th November, 2022 in its consideration of the Petitions for the removal from office of Commissioners of the Independent Electoral and Boundaries Commission, the Committee acceded to your requests vide your letter Ref. No. ACA/NA/1/2022 dated 25th November, 2022

The Committee wishes to respond as follows-

1. The Speaker conveyed only four (4) Petitions to the Justice and Legal Affairs Committee. Those are the only Petitions relevant to the current proceedings. The Petitions were forwarded to the Commissioners on the 16th November, 2022
2. The Minutes and Hansard of the proceedings of the 24th November, 2022 are enclosed.
3. The Hansard of the entire sessions of the Departmental Committee from 24th November, 2022 and 25th November, 2022 are herewith enclosed
4. There is no additional evidence that has been submitted with regard to all the four (4) Petitions; the Commissioner is therefore only required to respond to the issues raised in the petitions. If the Petitioner is unable to respond in person she remains at liberty to file a written response on or before 29th November, 2022 at 5 p.m. preferably under oath

Our Liaison Officers on this subject are Mr. Douglas Katho, who may be contacted on Tel 0722333145 or email: douglas.katho@parliament.go.ke and Mr. Clive Onyancha, Tel 0725993500 or email: clive.onyancha@parliament.go.ke

PETITION FOR REMOVAL FROM OFFICE OF COMMISSIONER OF THE IEBC

DO douglaskatho@gmail.com
Mon, 28 Nov 2022 5:32:01 PM +0300
To "apollo" <apollo@aca.co.ke>

The above matter refers.

Attached for your action.

Regards

JLAC Secretariat

[JLAC 8th Sitting.pdf](#)

[JLAC 9th Sitting.pdf](#)

[JLAC 10th Sitting.pdf](#)

[JLAC Hansard 24th Afternoon.pdf](#)

[JLAC HANSARD 24th Morning.pdf](#)

[JLAC HANSARD 25th Afternoon.pdf](#)

[JLAC HANSARD 25th Morning Sitting.pdf](#)

1 Attachment

Apollo and Co..pdf
1.7 MB

Yours

Sincerely,
Peter K. Chemweno
PETER K. CHEMWENO
FOR: CLERK OF THE NATIONAL ASSEMBLY

Ms. Juliana Cherera
Vice-Chairperson
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P O Box 45371 - 00100
NAIROBI.

PETITION FOR REMOVAL FROM OFFICE OF COMMISSIONER OF THE IEBC



Douglas Katho <douglaskatho@gmail.com>
to gichanwa Watala

Mon, Nov 28, 6:13 PM (15 hours ago)

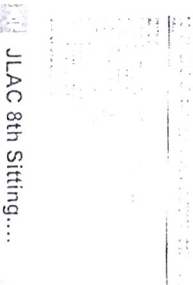
The above refers.
Attached for your action.
Regards
JLAC Secretariat

- JLAC 8th Sitting.pdf
- JLAC 9th Sitting.pdf
- JLAC 10th Sitting.pdf
- JLAC Hansard 24th Afternoon.pdf
- JLAC HANSARD 24th Morning.pdf
- JLAC HANSARD 25th Afternoon.pdf
- JLAC HANSARD 25th Morning Sitting.pdf

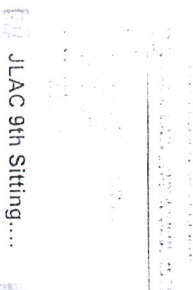
8 Attachments • Scanned by Gmail



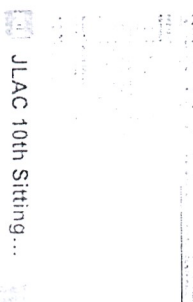
Letter to Wanderi...



JLAC 8th Sitting...



JLAC 9th Sitting...



JLAC 10th Sitting...



JLAC Hansard 24...



JLAC HANSARD ...



JLAC HANSARD ...

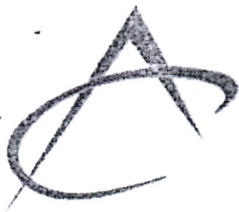


JLAC HANSARD ...

Reply

Reply all

Forward



Apollo & Co. Advocates

Advocates for Oaths, Notaries & Company Secretaries

Email: apollo@aca.co.ke

Website: www.aca.co.ke

(+254)-733226482/770473800

B2 Kindaruma Court

Kindaruma Road Kilimanjaro

P.O. Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022

Your Ref: NA/CNA/CORR/2022(252)

Date: 23rd November 2022

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

Dear Sir,

**RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO
ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS**

We refer to your letter dated 16th November 2022 and to our earlier letter dated 18th November 2022 which elicited no response despite that we sought to be furnished with information pursuant to **Access to Information Act No. 31 of 2016**.

Forwarded herewith are preliminary objections by our client Juliana Cherera to the four petitions.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'nde'(K)

cc: Client

cc: **Dr Jotham Arwa, Advocate**
Rachier & Amollo LLP
Mayfair Centre, 5th floor
Ralph Bunche Road,
P.O Box 55645-00200
NAIROBI
Tel.0722204778

cc: **Donald B. Kipkorir, Advocate**
KTK Advocates
KeMU Towers, 4th Floor,
Uhuru Highway/University Way.
P.O. BOX 10176 – 00100
NAIROBI
Tel.0788646283, 0712 113888
Email: mail@ktk.co.ke

Cc: **Gichamba & Co. Advocates**
Ngong Hills Hotel Office Suites, 3rd Floor
P.O.Box 74871-00200
NAIROBI
Tel. 0722643813
Email: info@gichambaadv.co.ke



GICHAMBA AND COMPANY

ADVOCATES • COMMISSIONERS FOR OATH • NOTARIES PUBLIC • PATENT AGENTS

Your Ref: TBA

Our Ref: CO/13/18/NG

Date: 22nd November 2022

The Honourable Clerk
National Assembly
Parliament Buildings
NAIROBI

Kind Attention: Honourable Samuel Njoroge

Dear Sir

RE: PETITIONS AS FILED BY

- a) REPUBLICAN LIBERAL PARTY
- b) DENNIS N. NTHUMBI
- c) GEOFFREY LANGAT AND
- d) OWUOR STEVE GERRY

OUR CLIENT: COMMISSIONER FRANCIS WANDERI

We refer to the above matter and to our instructions by Commissioner Francis Wanderi to address you hereinunder.

We confirm receipt of the 4 separate Petitions as filed against our client by the Petitioners and equally note the time frame as set out for the Hearings of the Petitions therein. We further note that from a reading of the stated Petitions our client has been adversely mentioned therein allegations of which are far reaching on our clients professional and social standing, yet no documentation has been annexed and provided in the Petitions as would be expected in allegations of these nature. We further do note that the stated hearings have been scheduled for the 24th November 2022 through to the 29th November 2022 a time frame that is not only suspicious but equally one that fails to take into consideration the fact that our client would be entitled to adequately prepare his defence under Article 50 of the Constitution that entitles him to fair hearing.

Accordingly, and in light of the stated allegations. there is indeed an urgent need for our client to be furnished with additional information and material substantiating and in support of the ill timed petition.

NDURU GICHAMBA, LLB

NATIONAL ASSEMBLY
RECEIVED

22 NOV 2022

CLERK'S OFFICE

P. O Box 41842, NAIROBI

Cell: +254 722 643813 | Tel: +254 720 465500 | gichamba@gichambaadv.s.o.ke | info@gichambaadv.s.o.ke
PIN: A004231186K | Ngong Hills Hotel Office Suites 3rd Floor | P.O BOX 74871-00200

WHEN REPLYING PLEASE QUOTE OUR REFERENCE

22/11/2022
Disposal Commission
Mr. Njoroge, etc
provide the
in person
links / submission
to the Commission



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ADVOCATES • COMMISSIONERS FOR OATH • NOTARIES PUBLIC • PATENT AGENTS

The main accusations against our client, as captured in all the four petitions, may be summarized as follows:

- (a) That our client in his capacity as a Commissioner allegedly filed an Affidavit in support of the petition filed before the Supreme Court challenging the presidential elections results.
- (b) That our client allegedly acquiesced to the alleged recommendations by Officials of National Security Advisory Committee (NSAC) that the results of the presidential election were to be altered to avert alleged chaos that would erupt if a certain presidential candidate was declared the winner.
- (c) That since our client was seen on television announcing results, alongside other commissioners, statements that were read by four commissioners to the effect that the presidential election was opaque did not reflect what they truly and sincerely believed in. On the contrary, they comprised of false, but incendiary, statements that were targeted at subverting the will of the electorate.
- (d) That our client agreed participated, contributed and gave recommendations at a meeting held between his fellow IEBC Commissioners and members of the Opposition as it were.

In line with Article 50 (1) of the Constitution of Kenya, the same provides that every person has a right to a fair trial before any body constitute, including a Committee of the Parliament as the case is herein.

Further to the above provision of the constitution we opine and rightfully so, that in line with the allegations as set out by the Petitioners our clients do have:

- a) The right to be granted adequate time and facilities to prepare and execute their defence.
- b) The right to be availed with all the material and evidence that has and shall be used against them the very obvious right to confront and challenge the evidence as presented against them.

NDURU GICHAMBA, LLB

Cell: +254 722643813 | Tel: +254 720 465500 | gichamba@gichambaadv.co.ke | info@gichambaadv.co.ke

PIN: A004231136K | Ngong Hills Hotel Office Suites 3rd Floor | P.O BOX 74871-00200

WHEN REPLYING PLEASE QUOTE OUR REFERENCE



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ADVOCATES • COMMISSIONERS FOR OATH • NOTARIES PUBLIC • PATENT AGENTS

In light of the context of the various Constitutional and Statutory provisions cited, our client requires the petitioners to furnish him with the information and materials outlined hereunder with respect to each of the above accusations.

(a) ALLEGATION THAT OUR CLIENT FILED AN AFFIDAVIT SUPPORTING THE PETITIONERS BEFORE THE SUPREME COURT

From a reading of the Petitions it is indeed the Petitioners contention that our client SUPPORTED the Petitions, as filed before the Supreme Court. Our client indeed vehemently denies the position as alluded to by the Petitioners and seeks to be furnished with a copy of the impugned Affidavit to enable him to adequately respond to the stated allegations therein.

(b) ALLEGATION THAT OUR CLIENT WAS IN SUPPORT OF THE ALLEGED RECOMMENDATIONS OF THE NATIONAL SECURITY ADVISORY COMMITTEE

It is alleged by all the Petitioners that our client supported the alleged proposals that were allegedly made by one Kennedy Kihara on behalf of NSAC to the effect that a particular presidential candidate should not be declared as a winner. Noting the far reaching effect of such an allegation and the consequences thereof our client seeks to be furnished with the following:

- i) CCTV footage of the events leading upto the Officials of the National Security Advisory Committee visit to Bomas of Kenya and the meeting held between themselves and the IEBC Commissioners at the stated venue.
- ii) Minutes of the meeting between IEBC Commissioners and the NSAC members.
- iii) The form in which the alleged "agreement" was conveyed, whether orally, by conduct or in writing,
- iv) If in writing, a copy of the written document,

NDURU GICHAMBA, LLB

Cell: +254 722643813 | Tel: +254 720 465500 | gichamba@gichambaadvs.o.ke | info@gichambaadvs.o.ke

PIN: A004231186K | Ngong Hills Hotel Office Suites 3rd Floor | P.O BOX 74871-00200

WHEN REPLYING PLEASE QUOTE OUR REFERENCE



GICHAMBA AND COMPANY

ADVOCATES • COMMISSIONERS FOR OATH • NOTARIES PUBLIC • PATENT AGENTS

- v) If orally, then the specific words uttered by our client which were interpreted by each of the petitioners to constitute "agreement" with NSAC proposal.

(c) ALLEGATIONS THAT OUR CLIENT AGREED WITH A REQUEST TO MODERATE RESULTS

In line with the aforementioned accusations our client wishes to be immediately furnished by the respective Petitioners, with the following:

- a. The specific words that were allegedly uttered by our client which, according to the petitioners, could be interpreted to mean that he agreed with the alleged proposal to moderate results.
- b. CCTV footage indicating the persons who attended that meeting.
- c. The specific mode of communication that was used by our client to remotely convey such agreement.

(d) ALLEGATIONS THAT OUR CLIENTS ALLEGED STATEMENT WAS TO THE EFFECT THAT THE RESULTS WERE OPAQUE WERE INTENDED TO SUBVERT THE WILL OF THE ELECTORATE

In line of the specific allegations made against our client by the petitioners, our client needs the following information and materials to be able to defend himself:

- (i) CCTV footage which would show if any meeting was held at Bomas during which our client could have been given details of all the County Results that had been verified and tallied.
- (ii) CCTV footage showing our client announcing constituency results which would reveal the ACTUAL RESULTS that were read by them in the full glare of the cameras.
- (iii) A copy of Form 34C which was shown to our client by IEBC Chairman Wafula Chebukati, and which triggered the protest from our client, which alone would confirm whether any of the results read by our client was indicated on the face of the Form 34C, that contained the final presidential results.

NDURU GICHAMBA, LLB

Cell: +254 722643813 | Tel: +254 720 465500 | gichamba@gichambaadv.s.o.ke | info@gichambaadv.s.o.ke

PIN: A004231186K | Ngong Hills Hotel Office Suites 3rd Floor | P.O BOX 74371-00200

WHEN REPLYING PLEASE QUOTE OUR REFERENCE



GICHAMBA AND COMPANY

ADVOCATES • COMMISSIONERS FOR OATH • NOTARIES PUBLIC • PATENT AGENTS

- (iv) Details of the facts supporting the petitioners' contention that our client did not sincerely and honestly believe that the results were opaque.
- (v) Details of any provision of the constitution, or any statute which makes it illegal for a Commissioner of IEBC to state his opinion with respect to the opacity or any other characteristic of the results of any election.
- (vi) Details of any provision of the constitution, or any statute which makes it mandatory for IEBC Commissioners to be present when election results are being declared by the Chairman of IEBC.

Consequently, our instructions are to request as we hereby do, that our client be allowed a minimum of **FOURTEEN (14) DAYS** to prepare and deliver his response, excluding the period taken by the petitioners to present their case. This will be in line with the Provisions of Article 50 (1) of the Constitution on the right to a fair trial, and Article 35 therein on the right to access to information, a Constitution which this Honourable House has vowed to abide to and protect above all else. The stated hearing programme as shared with our client is unfortunately not adequate to enable our clients to properly prepare for their defenses.

Noting that the Petitioners have extensively quoted the Honourable Chairman Mr. Wafula Chebukati as the main source and backbone of their Petition, our client shall call upon this House Committee to summon Mr. Wafula Chebukati to enable and allow our client the opportunity to cross examine him .

We shall further seek either through this House Committee and or through availed mechanisms at the disposal of our clients to seek that the alleged individuals adversely mentioned in the Petitions including officials of the National Security Advisory Council be summoned herein to testify as to our clients involvement and/or alleged acquiescence to their alleged recommendations and or directives. Our clients legacy being on the line we confirm that indeed the summonses as sought shall be an irreducible minimum as our client prepares his defence.

NDURU GICHAMBA, LLB

Cell: +254 722643813 | Tel: +254 720 465500 | gichamba@gichambaadvs.o.ke | info@gichambaadvs.o.ke

PIN: A004231186K | Ngong Hills Hotel Office Suites 3rd Floor | P.O BOX 74871-00200

WHEN REPLYING PLEASE QUOTE OUR REFERENCE



GICHAMBA AND COMPANY

ADVOCATES • COMMISSIONERS FOR OATH • NOTARIES PUBLIC • PATENT AGENTS

Your kind but very urgent response will be highly appreciated.

Yours faithfully,
GICHAMBA & COMPANY



NDURU GICHAMBA

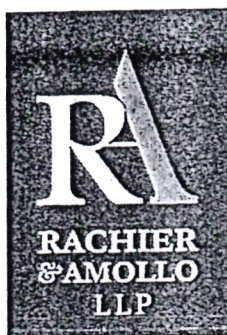
- Cc: The Speaker, National Assembly
- Cc: The Majority Leader, National Assembly
- Cc: The Minority Leader, National Assembly
- Cc: The Chairperson, Justice & Legal Affairs Committee
- Cc: Each Member of the Justice and Legal Affairs Committee.
- Cc: Dr. Jotham Arwa Esq c/o Rachier & Amollo Advocates LLP
- Cc: Donald. B Kipkorir Esq c/o KTK Advocates
- Cc: Apollo Mboya Esq c/o Apollo & Company Advocates

NDURU GICHAMBA, LLB

Cell: +254 722643813 | Tel: +254 720 465500 | gichamba@gichambaadvs.o.ke | info@gichambaadvs.o.ke

PIN: A004231186K | Ngong Hills Hotel Office Suites 3rd Floor | P.O BOX 74871-00200

WHEN REPLYING PLEASE QUOTE OUR REFERENCE



• ADVOCATES • COMMISSIONERS FOR OATHS • NOTARIES PUBLIC

PARTNERS

A.D.O Rachier	LLB (Dar) LLM (Nbi)
* Otiende Amollo	LLB (Nbi) LLM (Nbi) Litt.D,CPM
J. Okome Arwa	LLB (Nbi) LLM (Nbi)
Francis Olalo	LLB (Goa) CPS (K)
Stephen Ligunya	LLB (Nbi) LLM (Nbi)
Alvin Rachier	LLB(Wrk)LLM(Ucl)

ASSOCIATES

Jean Ogolla	LLB (Moi) MA-ICM (Nbi)
Kevin Wakwaya	LLB (Moi) CPM
Ezekiel Munyua	LLB (Mak)
William Ongoro	LLB (KU)
Marren Adunga	LLB (KU)
Rodney Amollo	LLB (Nbi)
Samantha Mangla	LLB (CUEA)
Grace Maina	LLB (JKUAT) ACI Arb
Bryson Ometo	LLB (Moi)

Your Ref:

Our Ref:

C/5957/22

Date 21st Nov. 2022

The Clerk
National Assembly
Parliament Buildings
NAIROBI

ATTENTION: SAMWEL NJOROGUE

Dear Sir

RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N. NTHUMBI, GEOFFREY LANGAT AND OWUOR STEVE GERRY

We refer to the above matter and to our letter dated 18th November 2022 and note, with great concern, that you have not seen it fit to favour us with any response thereto, in spite of the fact that our client urgently needs your response on the issues raised in that letter for him to be able to prepare his defence strategy. Your continued silence is therefore highly prejudicial to our client.

We further wish to advise that upon careful scrutiny of the accusations made against our client, we have encountered numerous challenges in our endeavour to unravel exactly what our client is alleged to have done wrong and which is said to constitute violations of the constitution or to amount to gross misconduct, as alleged by the petitioners. Accordingly, there is an urgent need for our client to be furnished with additional information and materials.

The main accusations against our client, as captured in all the four petitions, may be summarised as follows:

- That he agreed to moderate the results of the just concluded presidential elections at a meeting between IEBC commissioners and certain individuals including Raphael Tuju, Amos Wako and Advocate Kyalo Mbobu.
- That he filed an affidavit in support of the petition filed before the Supreme Court challenging the presidential elections results.
- That he agreed to certain proposals by the National Security Advisory Committee (NSAC) to the effect that the results of the presidential election should be changed to avert chaos that would erupt if a certain presidential candidate was declared the winner.

Mayfair Centre, 5th Floor
Ralph Bunche Road
P O Box 55645 - 00200
Nairobi, Kenya
E:lawtechs@rachieradvs.co.ke,

VAT REG NO. 0185055T
PIN NO. P051222196B

WHEN REPLYING PLEASE
QUOTE OUR REFERENCE

M: +254722204778
+254733616662
T: +254202716012
+254202716013
+254202716015

www.rachieradvs.co.ke
*on leave of absence

- (d) That since our client was seen on television announcing results, alongside other commissioners, statements that were read by four commissioners to the effect that the presidential election was opaque did not reflect what they truly and sincerely believed in. On the contrary, they comprised of false, but incendiary, statements that were targeted at subverting the will of the electorate.

To be able to make sense of the above accusations, in the context of the various constitutional and statutory provisions cited, our client requires the petitioners to furnish him with the information and materials outlined hereunder with respect to each of the above accusations.

(a) CONTENTION THAT HE AGREED WITH A REQUEST TO MODERATE RESULTS

With respect to the accusation that our client agreed to a request by Raphael Tuju and Amos Wako to moderate results of the presidential election, our client maintains that he never attended that meeting. The Petitioners however insist that he agreed with such proposals. In these circumstances, it is not possible for our client to defend himself unless he is furnished by each of the petitioners, with the following:

- (i) CCTV footage indicating the persons who attended that meeting.
- (ii) The specific words that were allegedly uttered by our client which, according to the petitioners, could be interpreted to mean that he agreed with the alleged proposal to moderate results.
- (iii) The specific mode of communication that was used by our client to remotely convey such agreement.

(b) CONTENTION THAT HE FILED AFFIDAVIT SUPPORTING THE PETITIONERS BEFORE THE SUPREME COURT

While all the petitioners maintain that our client SUPPORTED the petitions, our client insists that he OPPOSED the petitions which were filed challenging the results of the presidential election (save for specific concerns that he raised with respect to access to the server by unauthorised persons). The petitioners further insist that he filed an affidavit SUPPORTING the petitions. In these circumstances our client is unable to respond to such accusation, unless he is furnished with a copy of the affidavit which our client allegedly filed before the Supreme Court and in which he SUPPORTED the petitions.

(c) CONTENTION THAT HE AGREED WITH NSAC PROPOSALS

Although all petitioners maintain that our client supported the proposals that were allegedly made by one Kennedy Kihara on behalf of NSAC to the effect that a particular presidential candidate should not be declared as a winner, our client maintains that he never uttered a word when NASC members visited IEBC at Bomas. In these circumstances, it is not possible for our client to defend himself unless each of the petitioners furnish him with the following:

- (i) CCTV footage showing exactly what happened when NSAC visited IEBC Commissioners at Bomas of Kenya.
- (ii) Minutes of the meeting between IEBC Commissioners and the NSAC members.
- (iii) The form in which the alleged "agreement" was conveyed, whether orally, by conduct or in writing,
- (iv) If in writing, a copy of the written document, and

- (v) If orally, then the specific words uttered by our client which were interpreted by each of the petitioners to constitute "agreement" with NSAC proposal.
- (d) CONTENTION THAT THE FOUR COMMISSIONERS' STATEMENTS TO THE EFFECT THAT THE RESULTS WERE OPAQUE WERE INTENDED TO SUBVERT THE WILL OF THE ELECTORATE

With respect to this particular accusation, the Petitioners claim that because they saw our client announcing some results, he was actively involved in the electoral exercise and consequently he could not have honestly and sincerely believed that the results were opaque. This then leads them to the conclusion that such statements were merely intended to subvert the will of the electorate. On the other hand, our client maintains that he was not involved in the process of developing Form 34C which contained the results that were announced by the chairman, and that while he only announced a few constituency results, he did not know and could not verify whether such results had been included in the Form 34C, which contained presidential elections at county level, and which was prepared without his involvement or input, and finally, whose content he was not given any opportunity to verify.

In these circumstances, and in view of the specific allegations made against our client by the petitioners, our client needs the following information and materials to be able to defend himself:

- (i) CCTV footage which would show if any meeting was held at Bomas during which the four commissioners could have been given details of all the County Results that had been verified and tallied.
- (ii) CCTV footage showing the four commissioners announcing constituency results which would reveal the ACTUAL RESULTS that were read by them in the full glare of the cameras.
- (iii) A copy of Form 34C which was shown to the four commissioners by IEBC Chairman Wafula Chebukati, and which triggered the protest from the four commissioners, which alone would confirm whether any of the results read by the four commissioners was indicated on the face of the Form 34C, that contained the final presidential results.
- (iv) Details of the facts supporting the petitioners' contention that our client did not sincerely and honestly believe that the results were opaque.
- (v) Details of any provision of the constitution, or any statute which makes it illegal for a Commissioner of IEBC to state his opinion with respect to the opacity or any other characteristic of the results of any election.
- (vi) Details of any provision of the constitution, or any statute which makes it mandatory for IEBC Commissioners to be present when election results are being declared by the Chairman of IEBC.

In addition to the foregoing, and contrary to our earlier letter, we have instructions to notify you that our client will require slightly more time – upon being furnished with the above details – to prepare and deliver his defence. We are aware that Rule 230(4) of the Standing Orders allocate a maximum of **FOURTEEN (14) DAYS** for "EACH" petition. The program that has been published and which allocates to **FOUR** petitions filed against **FOUR** Commissioners (i.e. each commissioner must prepare and respond to four independent petitions) a period of **FOURTEEN (14) DAYS** for **ALL** the petitions, and **ONE (1) HOUR** for each commissioner, is too tight to permit a meaningful response to the weighty issues raised in each of the petitions, taking into account the likely impact of the said petitions upon our client. That programme

violates our client's right to fair trial, as well as his right to fair administrative action, and needs to be amended in the interests of justice.

Consequently, our instructions are to request as we hereby do, that our client be given a minimum of **SEVEN (7) DAYS** to prepare and deliver his response, excluding the period taken by the petitioners to present their case. Kindly but urgently therefore furnish us with the amended programme to enable us prepare with our client.

Finally, we should also be grateful if you would kindly but urgently confirm to us if our client will be given the opportunity to cross-examine the Chairman of IEBC, Wafula Chebukati, in view of the fact that virtually all the allegations made in the four petitions are premised on the affidavit he filed before the Supreme Court, the contents of which was treated by all petitioners as Gospel truth which is the reason why all the petitioners completely ignored the contents of all other affidavits which were also filed before the Supreme Court and which denied those allegations.

Your kind but very urgent response will be highly appreciated.

Yours faithfully
RACHIER & AMOLLO LLP



DR. JOTHAM OKOME ARWA

Cc: The Speaker, National Assembly
Cc: The Majority Leader, National Assembly
Cc: The Minority Leader, National Assembly
Cc: The Chairperson, Justice & Legal Affairs Committee
Cc: Each Member of the Justice and Legal Affairs Committee.



• ADVOCATES • COMMISSIONERS FOR OATHS • NOTARIES PUBLIC

PARTNERS

A.D.O Rachier	LLB (Dar) LLM (Nbi)
* Otiende Amollo	LLB (Nbi) LLM (Nbi) Litt.D, CPM
J. Okome Arwa	LLB (Nbi) LLM (Nbi)
Francis Olalo	LLB (Goa) CPS (K)
Stephen Ligunya	LLB (Nbi) LLM (Nbi)
Alvin Rachier	LLB(Wrk)LLM(Ucl)

ASSOCIATES

Jean Ogolla	LLB (Moi) MA-ICM (Nbi)
Kevin Wakwaya	LLB (Moi) CPM
Ezekiel Munyua	LLB (Mak)
William Ongoro	LLB (KU)
Marren Adunga	LLB (KU)
Rodney Amollo	LLB (Nbi)
Samantha Mangla	LLB (CUEA)
Grace Maina	LLB (JKUAT) ACI Arb
Bryson Omoto	LLB (Moi)

Your Ref:

Our Ref:

Date: 18-Nov-22

The Clerk
National Assembly
Parliament Buildings
Nairobi

Attention Mr. Samuel Njoroge

Dear Sir,

RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N NTHUMBI,
GEOFFREY LANGAT AND OWUOR STEVE GERRY
OUR CLIENT - JUSTUS NYANG'AYA

We refer to the above petitions and wish to bring to your attention the fact that we have been retained to act for our above-named client in connection therewith. Before we file any response on behalf of our client however, our first responsibility is to confirm the completeness of the record. Accordingly, we should be grateful if you would kindly but urgently confirm to us whether any other documents, affidavits or annexures may have been filed with yourselves as against our client, apart from the following documents, which are the only documents served upon our client:

1. Petition filed and signed by Owuor Steve Gerry
2. Petition filed and signed by Rev. Dennis Nthumbi, which is supported by an affidavit sworn on 2nd November 2002, which merely confirms that the deponent is the author and originator of the petition.
3. Petition by Republican Liberal Party filed and signed by Zachariah M Matayo
4. Petition filed and signed by Geoffrey Langat of ID No. 25154044

Furthermore, we should be grateful if you would also kindly but urgently confirm to us whether our client will be given the opportunity to attend the Parliamentary Committee proceedings during the presentation of the case against him by the petitioners for purposes of listening to the factual allegations being made against him by all the petitioners.

Mayfair Centre, 5th Floor
Ralph Bunche Road
P O Box 55645 - 00200
Nairobi, Kenya

E:lawtechs@rachieradvs.co.ke,

VAT REG NO. 0185055T
PIN NO. P051222196B

WHEN REPLYING PLEASE
QUOTE OUR REFERENCE

M: +254722204778
+254733616662
T: +254202716012
+254202716013
+254202716015

www.rachieradvs.co.ke

*on leave of absence

As you are no doubt aware, the allegations made against our client in the four petitions are extremely serious and the reliefs sought as against our client are likely to visit disastrous consequences on him socially, professionally and even politically. Our client is therefore entitled to a fair trial.

Article 50(1) of the Constitution of Kenya provide that every person has a right to a fair trial before a court, a tribunal or any other "body". A Parliamentary Committee hearing a petition seeking to remove a state officer is therefore "a body" within the meaning of Article 50(1) aforesaid, which must conduct its proceedings in such a manner as to ensure that any person who might be adversely affected by its decisions is given a fair hearing.

The ingredients of a fair hearing under International Human Rights Law includes the following:

- a. The right to be informed of the charge against the person accused of any wrongdoing with sufficient details to answer it;
- b. The right to be given adequate time and facilities to prepare a defence to the accusations;
- c. The right to be present when the accusations are being levelled against oneself;
- d. The right to be availed all evidence that is sought to be used against the person accused in good time before he can be called upon to defend himself; and
- e. The right to confront and challenge the evidence presented by his accusers.

Our instructions are therefore to demand, as we hereby do as follows:

- i. That our client be allowed to attend all the Parliamentary Committee proceedings from the beginning to the end of the presentation of the case against him, whether personally or by advocate, so that he is enabled to listen to all the accusations that will be levelled against him by all the petitioners, and to confront the said petitioners.
- ii. That our client be allowed, whether personally or through his advocate, to cross-examine each of the petitioners to ascertain the veracity of their accusations against our client.
- iii. That if no cross-examination of the petitioners will be permitted, then our client be permitted to submit questions to the petitioners before the commencement of the proceedings, which questions should be answered either before the commencement of the proceedings or during hearing.
- iv. That after the conclusion of the presentation of the case against our client, that our client be furnished with the complete record of all the proceedings containing all the evidence and/or allegations made against him by each of the petitioners, as well as all the questions asked by the Committee members, and the answers given to all such questions, at least **ONE (1) DAY** before he can be called to appear before the same Committee to defend himself.
- v. That our client be given the opportunity to call such witnesses as he will require not only to controvert the allegations made against him by the petitioners but also to support his own evidence.

- vi. That if witnesses are not permitted, then our client be allowed to submit witness statements from such persons as are ready and willing to appear as his witnesses before the Parliamentary Committee.
- vii. That our client be given at least **THREE (3) HOURS** to defend himself before the Parliamentary Committee.
- viii. That the date and time already set for the appearance of our client before the Parliamentary Committee be adjusted in such a manner as to permit full compliance with the basic touchstones of a fair trial as summarised above.

Your kind but urgent response to the issues raised above will be highly appreciated.

Yours Faithfully
RACHIER & AMOLLO LLP

A handwritten signature in black ink, appearing to be 'DR. J.O. ARWA', with a long horizontal stroke extending to the right.

DR. J.O ARWA

CC: CLIENT



PARTNERS

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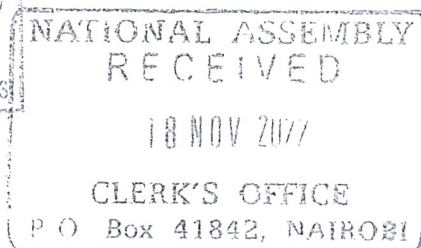
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Bryson Ometo LLB (Moi)

Your Ref:

Our Ref:

Date: 18-Nov-22

The Clerk
Directorate of Departmental Committees
National Assembly
Parliament Buildings
Nairobi



Attention Mr. Samuel Njoroge

Dear Sir,

Douglas Katho
to facilitate
21/11/22
RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N NTHUMBI,
GEOFFREY LANGAT AND OWUOR STEVE GERRY
OUR CLIENT - JUSTUS NYANG'AYA

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Furthermore, we should be grateful if you would also kindly but urgently confirm to us whether our client will be given the opportunity to attend the Parliamentary Committee proceedings during the presentation of the case against him by the petitioners for purposes of listening to the factual allegations being made against him by all the petitioners.

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Yours Faithfully
RACHIER & AMOLLO LLP

A handwritten signature in dark ink, appearing to be 'J.G. Arwa', with a long horizontal stroke extending to the right.

DR. J.G. ARWA

CC: CLIENT

ANNEXURE 8:

RULES

RULES OF PROCEDURE ON MATTERS RELATING TO THE PETITIONS FOR THE REMOVAL OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

committee clerks to note

Citation

1. These Rules may be cited as the Rules of Procedure for the Parliamentary Committee on Justice and Legal Affairs relating to the petitions for the removal of Commissioners of the Independent Electoral and Boundaries Commission.

Interpretation

2. In these Rules unless the context otherwise requires—

“Clerk” means the Clerk of the National Assembly and includes any person for the time being performing the duties of the Clerk of the National Assembly or the Clerk of the Senate;

“Committee” means the Justice and Legal Affairs Committee relating to the removal of Commissioners of the Independent Electoral and Boundaries Commission;

“House” means the National Assembly;

“Petition” means a document presented by a person desiring the removal of a member of a commission or of a holder of an independent office pursuant to Article 251(2) of the Constitution;

“Respondent” means a Commissioner of the Independent Electoral and Boundaries Commission against whom a Petition has been filed;

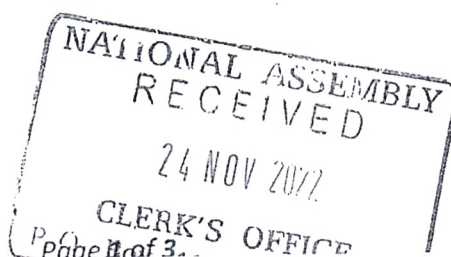
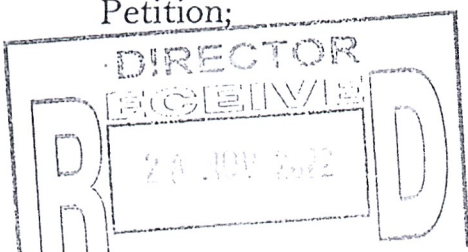
“Speaker” means the Speaker of the National Assembly; and

“Standing Orders” means the Standing Orders of the National Assembly.

Speaker's guidelines

Pursuant to Speaker's conveyance of petitions against four (4) Commissioners—

- (a) Each Respondent shall be given at least seven (7) days' notice before the date of the hearing. The notice shall specify the time, place and venue of the hearing of the Petition;
- (b) Each Respondent shall be given adequate time to respond to any additional documentation presented by the petitioners;
- (c) The Committee shall consider a Petition as presented, save for additional information or documentation presented to clarify the contents of the Petition;



COPY

(d) A Respondent may appear in person or through legal representative for the hearing and the cross-examination of the petitioners; and

(e) A Respondent may respond orally or in writing.

Conduct of Members

4. (1) A Member of the committee shall not advance or defend the interests of either party

(2) A Member of the committee shall remain decorous and civil towards all parties that appear before the Committee.

(3) The Committee conduct the hearing with minimal interventions.

Duties of Chairperson

5. Pursuant to Standing Order 180 the Chairperson shall—

(a) preside at meetings of the committee;

(b) perform the functions and exercise the powers assigned to the office of the Chairperson by the committee, resolutions of the Assembly or legislation; and

(c) be the spokesperson of the committee.

Schedule of hearings

6. The Committee shall adopt a schedule of hearings which shall serve as the notice of meetings for the Committee and the parties to a Petition.

Attendance by non-members of the Committee

7. (1) Pursuant to Standing Order 195, a Member may attend the hearings of the Committee.

(2) A Member who intends to participate in a hearing of the Committee shall submit a written request to the Chairperson at least twenty-four hours before the hearing, or such other period the Chairperson may in exceptional circumstances allow.

(3) The request shall indicate any matter which the Member intends to raise at the meeting.

(4) Where the Chairperson allows a request for participation under paragraph (2), the Member may attend the meeting and raise any matters indicated in his or her request.

(5) The Chairperson shall, before allowing a non-member to participate in a matter before the committee, give priority to the Members of the Committee.

- (6) The Chairperson may order a non-member of the committee to withdraw from a hearing for disorderly conduct.

Public access to the meetings of the Committee

8. Pursuant to Standing Order 198, the proceedings of the Committee shall be open to the public unless, in exceptional circumstances, the Speaker has determined that there are justifiable reasons for the exclusion of the public.

Allocation of time to Parties

9. (1) Pursuant to Standing Order 67(b), the Committee shall allow a Respondent not more two hours or such further time as it may, in each case determine, to respond to the Petitions.

(2) Where more than one Respondent intends to cross-examine a Petitioner, the Committee shall allocate the available time equally between the Respondents and the Petitioner, for purposes of reply.

(3) Where more than one Petitioner intends to cross-examine a Respondent, the Committee shall allocate the available time equally between the Petitioners and the Respondent, for purposes of reply.

(4) The Committee shall determine, from within the time allocated to a party, the period to be used for introduction and closing remarks.

Decisions of the Committee

10. Subject to Standing Order 199, decisions of the Committee shall be made by—

(a) a consensus among the members; or

(b) a majority vote of the Members of the Committee present.

Amendment of Rules of Procedure

11. (1) A Member may propose an amendment to these Rules.

(2) The Committee may pass an amendment to these rules by a majority vote of all the members of the Committee.

Application of the Constitution, Statute and precedents

12. In all cases where matters are not expressly provided for by the Standing Orders or these Rules, any procedural question shall be decided by the Chairperson based on the Constitution of Kenya, the Fair Administrative Action Act, 2015 and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya.

ANNEXURE 9:

PRELIMINARY OBJECTIONS

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPUBLICAN LIBERTY PARTY-----PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that Commissioner Juliana Cherera, the respondent herein shall raise the Preliminary Objection to the Petition of **REPUBLICAN LIBERTY PARTY** dated 13th October 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes Article 250(9) of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.
2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.
3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice and fair administrative action.** .
4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of Standing Order 223 (Form of Petition) and paragraph (a) (i), (ii) and (iii) Standing Order 230.
6. THAT the petitioner is corporate entity with a common seal pursuant to section of the political parties Act No 11 of 2011 but the signatory to the petition is one **Zacharia M. Matayo** who has not demonstrated that he has authority to sign the Petition on behalf of the political party nor affixed the common seal of the party on the petition.
7. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.
8. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.
11. THAT there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022



APOLLO MBOYA, HSC
APOLLO & COMPANY ADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

• Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000

NAIROBI

Tel. +254-020-2221291

Email: clerknationalassembly@parliament.go.ke

• Dr. Jotham Arwa, Advocate

Rachier & Amollo LLP

Cityfair Centre, 5th floor

Ralph Bunche Road,

P.O Box 55645-00200

NAIROBI

Tel. 0722204778

Email: lawtechs@rachieradv.co.ke

• Donald B. Kipkorir, Advocate

KTK Advocates

KeMU Towers, 4th Floor,

Uhuru Highway/University Way,

P.O. BOX 10176 - 00100

NAIROBI

Tel. 010788646283, 0712 113888

Email: mail@ktk.co.ke

• Gichamba & Co. Advocates

Ngong Hills Hotel Office Suites, 3rd Floor

P.O.Box 74871-00200

NAIROBI

Tel. 0722643813

Email: info@gichambaadv.co.ke

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REV. DENNIS NDWIGA NTHUMBI-----PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that Commissioner Juliana Cherera, the respondent herein shall raise the Preliminary Objection to the Petition of REV. DENNIS NDWIGA NTHUMBI dated 2nd November 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes Article 250(9) of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.
2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of paragraph 4 of the Standing Order 230 which require the Committee to investigate the matter and report to the House within fourteen days.
3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to the rules of natural justice and fair administrative action. .
4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in Article 50 of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. **THAT** the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h), (i), (j), (l) and (m) of Standing Order 223 (Form of Petition) and paragraph (a) (i), (ii) and (iii) Standing Order 230.
6. **THAT** the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.
7. **THAT** the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.
10. **THAT** there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022



APOLLO MBOYA, HSC

APOLLO & COMPANY ADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

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Clerk's Chambers
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REPUBLIC OF KENYA
NATIONAL ASSEMBLY
13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

GEOFFREY LANGAT -----PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that Commissioner Juliana Cherera, the respondent herein will raise the Preliminary Objection to the Petition of Geoffrey Langat dated 9th September 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes Article 250(9) of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.
2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of paragraph 4 of the Standing Order 230 which require the Committee to investigate the matter and report to the House within fourteen days.
3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to the rules of natural justice and fair administrative action. .
4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in Article 50 of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.
5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of Standing Order 223 (Form of Petition) and paragraph (a) (i), (ii) and (iii) Standing Order 230.

6. THAT the petition is incompetent as it is seeking the removal of one Juliana Cherere who is not a Constitutional Office holder in Independent Electoral and Boundaries Commission.
7. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.
8. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.
11. THAT there is no petition before the Honourable House and Committee capable of being investigated.

Dated at Nairobi this 23rd Day of November 2022



APOLLO MBOYA, HSC
APOLLO & COMPANY ADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI
Tel. +254-020-2221291
Email: clerknationalassembly@parliament.go.ke

• **Dr. Jotham Arwa, Advocate**

Rachier & Amollo LLP

• Mayfair Centre, 5th floor

Ralph Bunche Road,

P.O Box 55645-00200

NAIROBI

Tel.0722204778

Email: lawtechs@rachieradvs.co.ke

Donald B. Kipkorir, Advocate

KTK Advocates

KeMU Towers, 4th Floor,

Uhuru Highway/ University Way,

P.O. BOX 10176 - 00100

NAIROBI

Tel.0788646283, 0712 113888

Email: mail@ktk.co.ke

• **Gichamba & Co. Advocates**

Ngong Hills Hotel Office Suites, 3rd Floor

• P.O.Box 74871-00200

NAIROBI

Tel. 0722643813

Email: info@gichambaadvs.co.ke

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

OWUOR STEVE GERRY-----PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that Commissioner Juliana Cherera, the respondent herein shall raise the Preliminary Objection to the Petition of Owuor Steve Gerry dated 19th September 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes **Article 250(9)** of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.
2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.
3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice and fair administrative action**.
4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h), (i), (j), (l) and (m) of Standing Order 223 (Form of Petition) and paragraph (a) (i), (ii) and (iii) Standing Order 230.
6. THAT the petition is incompetent as it is seeking the removal of one Juliana Cherere who is not a Constitutional Office holder in Independent Electoral and Boundaries Commission.
7. THAT there is no prayer for removal of Constitutional Office holder in the petition.
8. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.
9. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.
12. THAT there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022



APOLLO MBOYA, HSC

APOLLO & COMPANY ADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000

NAIROBI

Tel. +254-020-2221291
Email: clerknationalassembly@parliament.go.ke

Dr. Jotham Arwa, Advocate

Rachier & Amollo LLP
Mayfair Centre, 5th floor
Ralph Bunche Road,
P.O Box 55645-00200

NAIROBI

Tel.0722204778
Email: lawtechs@rachieradv.co.ke

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NAIROBI

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Gichamba & Co. Advocates

Ngong Hills Hotel Office Suites, 3rd Floor
P.O.Box 74871-00200

NAIROBI

Tel. 0722643813
Email: info@gichambaadv.co.ke

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPUBLICAN LIBERTY PARTY-----PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

AND

REV. DENNIS NDWIGA NTHUMBI-----PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

AND

GEOFFREY LANGAT -----PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

AND

OWUOR STEVE GERRY-----PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

NOTICE TO SEEK ADJOURNMENT

TAKE NOTICE that Commissioner Juliana Cherera, the respondent herein on 28th November 2022 shall seek adjournment of the proceedings in respect of the Petition of **REPUBLICAN LIBERTY PARTY** dated 13th October 2022, Petition of **REV. DENNIS NDWIGA NTHUMBI** dated 2nd November 2022, Petition of **Geoffrey Langat** dated 9th September 2022 and Petition of **Owuor Steve Gerry** dated 19th September 2022 on the grounds THAT:

1. The Clerk to the National Assembly has refused, neglected and/or declined to comply with request to information pursuant to **Article 35 of the Constitution of Kenya** and the **Access to Information Act No. 31 of 2016** to furnish **Commissioner Juliana Cherera** with information that is required for her defence as follows:

1.1 The total number and copies of **Petitions received by the National Assembly Main Records Unit** on the removal of the current Commissioners of Independent Electoral and Boundaries Commission.

1.2 The **Hansard** report of the Departmental Committee that drew the schedule for the hearings

1.3 The **Ruling and Hansard** of the proceedings of 24th November 2022 before the Departmental Committee on Justice and Legal Affairs.

1.4 The **Hansard** of the entire session of the Departmental Committee from 24th November 2022 to date.

1.5 All the evidence presented by the petitioners before the Departmental Committee in support of their allegations.

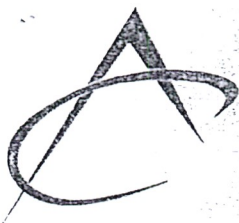
2. **Commissioner Juliana Cherera**, in exercise of her unlimited fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial requires adequate time and facilities to prepare responses to each of the four (4) petitions.

3. The proceedings before this Honourable Departmental Committee for removal, which are sui generis constitutional and political process, is *quasi-judicial* in nature that must adhere to **the rules of natural justice** and **fair administrative action**.

4. There is need to obtain better and further particulars on the nexus between the petitions before this Honourable Departmental Committee and the tweet of **President William Ruto** on 25/11/2022 at 8.50 am to ascertain whether the process is already predetermined taking into account that the President who may end up forming a Tribunal referred to the Four (4) Commissioners of the Independent Electoral and Boundaries Commission as rogue officials.

• Donald B. Kipkorir, Advocate
• KTK Advocates
KeMU Towers, 4th Floor,
• Uhuru Highway/University Way,
P.O. BOX 10176 – 00100
NAIROBI
Tel.0788646283, 0712 113888
Email: mail@ktk.co.ke

Gichamba & Co. Advocates
Ngong Hills Hotel Office Suites, 3rd Floor
P.O.Box 74871-00200
NAIROBI
Tel. 0722643813
Email: info@gichambaadv.co.ke



Apollo & Co. Advocates

Commissioners for Oaths, Notaries & Company Secretaries

Email: apollo@aca.co.ke

Website: www.aca.co.ke

(+254)-735725482, 770473800

B2 Kindaruma Court,

Kindaruma Road-Kilimanjaro

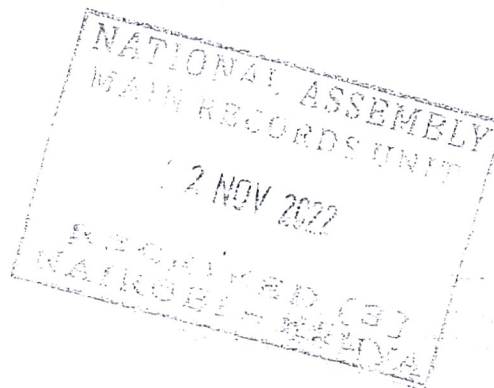
P.O.Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022

Your Ref: NA/CNA/CORR/2022(252)

Date: 18th November 2022

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI



Dear Sir,

RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

We refer to your letter dated 16th November 2022 and to our earlier letter dated today in respect the Petitions for removal of our client, **Juliana Cherera**, the Vice Chairperson of the Independent Electoral and Boundaries Commission.

We have noted that presentations of the four (4) petitions shall be on **24th and 25th November 2022**. Thereafter our client is required to respond to the four(4) petitions within 4 days from the dates of presentations of the four (4) petitions on 28th and 29th November 2022.

As you are aware, the proceedings of the Departmental Committee for removal are *sui generis* constitutional and political process that is *quasi-judicial* in nature where **the rules of natural justice** and **fair administrative action** must be observed.

The fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence must be accorded to person who is likely to suffer from the adverse finding. In order for our client to adequately prepare to respond to each of the four (4) petitions, our client requires a minimum of fourteen (14) days for each petition.

- In view of the above, we take this early opportunity to bring to your attention that the scheduled for the proceedings before the Departmental Committee does not conform
- to the constitutional tenets of fair hearing.

As you are aware, **Article 35** of the Constitution of Kenya bestows on every citizen the right of access to information held by the State and information held by another person and required for the exercise or protection of any right or fundamental freedom. Pursuant to the said constitutional provisions and the statutory provision in the **Access to Information Act No. 31 of 2016**, this is to request to be furnished with the following:

1. Hansard report of the Conveyance of the four (4) petitions to the Departmental Committee from the House.
2. The Hansard report of the Departmental Committee that drew the schedule for the hearings
3. The total number and copies of Petitions received by the National Assembly Main Records Unit in respect of the removal of the current Commissioners of Independent Electoral and Boundaries Commission.
4. Updated Hard Copy of Standing Orders of the National Assembly
5. All the proceedings and decisions of the Departmental Committee and the House in respect of the Petitions for removal of Constitutional Office Holders from the year 2010 to date.

The said information and documents are required by our client to facilitate our client to prepare to respond to the four(4) petitions within the requested period of fourteen 14 days for each of the Petitions.

Yours faithfully,
Apollo & Company Advocates

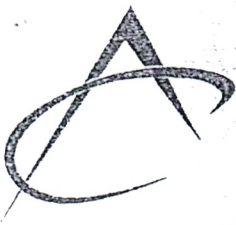


APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client

cc: **Dr Jotham Arwa, Advocate**
Rachier & Amollo LLP
Mayfair Centre, 5th floor
Ralph Bunche Road,
P.O Box 55645-00200
NAIROBI
Tel.0722204778
Email: lawtechs@rachieradv.co.ke

cc: **Donald B. Kipkorir, Advocate**
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KeMU Towers, 4th Floor,
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Email: apollo@aca.co.ke

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(+254)-733725482, 770473800

B2 Kindaruma Court,

Kindaruma Road-Kilimani

P.O.Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022

Your Ref: NA/CNA/CORR/2022(252)

Date: 23rd November 2022

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

Dear Sir,

**RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO
ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS**

We refer to your letter dated 16th November 2022 and to our earlier letter dated 18th November 2022 which elicited no response despite that we sought to be furnished with information pursuant to **Access to Information Act No. 31 of 2016**.

Forwarded herewith are preliminary objections by our client Juliana Cherera to the four petitions.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client

cc: **Dr Jotham Arwa, Advocate**
Rachier & Amollo LLP
Mayfair Centre, 5th floor
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Ngong Hills Hotel Office Suites, 3rd Floor
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REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPUBLICAN LIBERTY PARTY-----PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that Commissioner Juliana Cherera, the respondent herein shall raise the Preliminary Objection to the Petition of **REPUBLICAN LIBERTY PARTY** dated 13th October 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes Article 250(9) of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.
2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.
3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice and fair administrative action**.
4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h), (i), (j), (l) and (m) of Standing Order 223 (Form of Petition) and paragraph (a) (i), (ii) and (iii) Standing Order 230.
6. THAT the petitioner is corporate entity with a common seal pursuant to section of the political parties Act No 11 of 2011 but the signatory to the petition is one **Zacharia M. Matayo** who has not demonstrated that he has authority to sign the Petition on behalf of the political party nor affixed the common seal of the party on the petition.
7. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.
8. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.
11. THAT there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022



APOLLO MBOYA, HSC
APOLLO & COMPANY ADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

Clerk of the National Assembly

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P.O.Box 45371-01000

NAIROBI

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NAIROBI

Tel.0788646283, 0712 113888

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Gichamba & Co. Advocates

Ngong Hills Hotel Office Suites, 3rd Floor

P.O.Box 74871-00200

NAIROBI

Tel. 0722643813

Email: info@gichambaadv.co.ke

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REV. DENNIS NDWIGA NTHUMBI-----PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

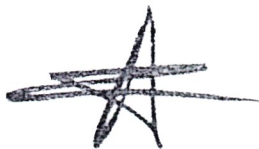
NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that Commissioner Juliana Cherera, the respondent herein shall raise the Preliminary Objection to the Petition of REV. DENNIS NDWIGA NTHUMBI dated 2nd November 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes Article 250(9) of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.
2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.
3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice and fair administrative action**.
4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. **THAT** the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of Standing Order 223 (Form of Petition) and paragraph (a) (i), (ii) and (iii) Standing Order 230.
6. **THAT** the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.
7. **THAT** the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.
10. **THAT** there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022



APOLLO MBOYA, HSC

APOLLO & COMPANY ADVOCATES FOR JULIANA CHERERA

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Clerk of the National Assembly
Clerk's Chambers
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NAIROBI

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REPUBLIC OF KENYA
NATIONAL ASSEMBLY
13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

GEOFFREY LANGAT -----PETITIONER
-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that Commissioner Juliana Cherera, the respondent herein shall raise the Preliminary Objection to the Petition of Geoffrey Langat dated 9th September 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes **Article 250(9)** of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.
2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.
3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice and fair administrative action**.
4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.
5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h), (i), (j), (l) and (m) of **Standing Order 223** (Form of Petition) and paragraph (a) (i), (ii) and (iii) **Standing Order 230**.

6. THAT the petition is incompetent as it is seeking the removal of one Juliana Cherere who is not a Constitutional Office holder in Independent Electoral and Boundaries Commission.
7. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.
8. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.
11. THAT there is no petition before the Honourable House and Committee capable of being investigated.

Dated at Nairobi this 23rd Day of November 2022



APOLLO MBOYA, HSC
APOLLO & COMPANY ADVOCATES FOR JULIANA CHERERA

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-VERSUS-

COMMISSIONER JULIANA CHERERA-----RESPONDENT

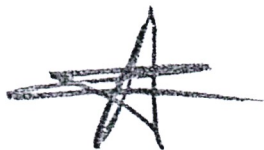
NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that Commissioner Juliana Cherera, the respondent herein shall raise the Preliminary Objection to the Petition of Owuor Steve Gerry dated 19th September 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes **Article 250(9)** of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.
2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.
3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice and fair administrative action**.
4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h), (i), (j), (l) and (m) of Standing Order 223 (Form of Petition) and paragraph (a) (i), (ii) and (iii) Standing Order 230.
6. THAT the petition is incompetent as it is seeking the removal of one Juliana Cherere who is not a Constitutional Office holder in Independent Electoral and Boundaries Commission.
7. THAT there is no prayer for removal of Constitutional Office holder in the petition.
8. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.
9. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.
12. THAT there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022



APOLLO MBOYA, HSC

APOLLO & COMPANY ADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

Clerk of the National Assembly

Clerk's Chambers

National Assembly

Parliament Buildings

P.O.Box 45371-01000

NAIROBI

Tel. +254-020-2221291

Email: clerknationalassembly@parliament.go.ke

Dr. Jotham Arwa, Advocate

Rachier & Amollo LLP

Mayfair Centre, 5th floor

Ralph Bunche Road,

P.O Box 55645-00200

NAIROBI

Tel.0722204778

Email: lawtechs@rachieradvs.co.ke

Donald B. Kipkorir, Advocate

KTK Advocates

KeMU Towers, 4th Floor,

Uhuru Highway/University Way,

P.O. BOX 10176 - 00100

NAIROBI

Tel.0788646283, 0712 113888

Email: mail@ktk.co.ke

Gichamba & Co. Advocates

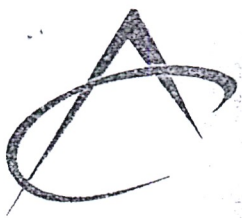
Ngong Hills Hotel Office Suites, 3rd Floor

P.O.Box 74871-00200

NAIROBI

Tel. 0722643813

Email: info@gichambaadvs.co.ke



Apollo & Co. Advocates

Commissioners for Oaths, Notaries & Company Secretaries

Website: www.aca.co.ke
(+254)-733725482, 770473800

B2 Kindaruma Court,
Kindaruma Road-Kilimani
P.O.Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022

Your Ref: NA/CNA/CORR/2022(302)

Date: 25th November 2022

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

Advance Copy via
cna@parliament.go.ke, rwalala@gmail.com

Dear Sir,

**RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS
CONSIDERATION OF THE PETITIONS PRESENTED FOR
REMOVAL OF JULIANA CHERERA**

We refer to your letter dated 25th November 2022 sent via email at 8.09 pm on the same day.

As you are aware by our letter dated 23rd November 2022 we requested for among others information the total number and copies of Petitions received by the National Assembly Main Records Unit on the removal of the current Commissioners of Independent Electoral and Boundaries Commission. The same is not been supplied to date.

Again by our letter dated 25th November 2022, we again requested to be supplied with the same information and with certified copy of the **Ruling** and the **Hansard** of the proceedings of 24th November 2022 before the Departmental Committee on Justice and Legal Affairs. The same is yet to be supplied.

The proceedings of the Departmental Committee are *sui generis* constitutional and political process that is *quasi-judicial* in nature where the rules of natural justice and fair administrative action must be observed. Our client is entitled to the fundamental rights and freedoms in Article 50 of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence. Article 35 of the Constitution of Kenya and the statutory provision in the Access to Information Act No. 31

of 2016 bestows on every citizen the right of access to information held by the State and information held by another person and required for the exercise or protection of any right or fundamental freedom.

This is therefore to request you once again, that you supply us with the following:

1. The total number and copies of Petitions received by the National Assembly Main Records Unit on the removal of the current Commissioners of Independent Electoral and Boundaries Commission.
2. The **Ruling** and **Hansard** of the proceedings of 24th November 2022 before the Departmental Committee on Justice and Legal Affairs.
3. The **Hansard** of the entire session of the Departmental Committee from 24th November 2022 to date.
4. All the evidence presented by the petitioners before the Departmental Committee in support of their allegations

In addition, we would appreciate to get a confirmation that our client is permitted to:-

- a) cross examine the Petitioners
- b) call her witnesses
- c) present evidence

The information and the confirmation requested is to enable our client prepare adequately to defend herself.

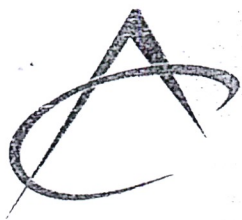
We would appreciate to get the information and the confirmation requested before the end of today.

Yours faithfully,
Apollo & Company Advocates



APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client,



Apollo & Co. Advocates

Commissioners for Oaths, Notaries & Company Secretaries

Website: www.aca.co.ke

(+254) 733725482, 770473800

B2 Kindaruma Court,

Kindaruma Road-Kilimani

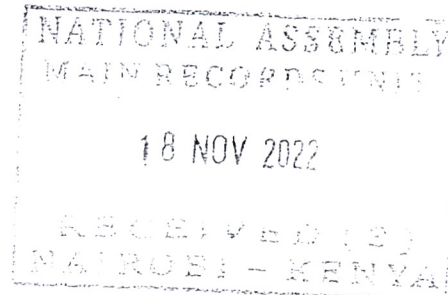
P.O. Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022

Your Ref: NA/CNA/CORR/2022(252)

Date: 18th November 2022

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box 45371-01000
NAIROBI



Dear Sir,

RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO
ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS

We have instruction from our client **Juliana Cherera**, the Vice
Chairperson of the Independent Electoral and Boundaries Commission to
acknowledge receipt of your letter dated 16th November 2022.

We shall attend the proceedings and file the response.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client,

Douglas Katho
to facilitate consideration
LA Mr D
24/11/22

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**IN THE MATTER OF PETITION FILED BY:
GEOFFREY LANGAT AGAINST FRANCIS WANDERI;**

SEEKING REMOVAL OF FRANCIS WANDERI AS IEBC COMMISSIONER

NOTICE OF PRELIMINARY OBJECTION

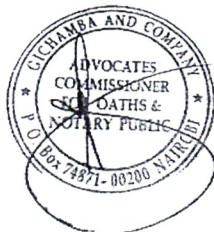
TAKE NOTICE that **FRANCIS WANDERI** (Hereinafter referred to as "**The Objector**") shall raise a preliminary objection at the hearing of the above proceedings on the following **GROUND**s:

1. That the Petition as filed does not meet the threshold as set out in Article 251 of the Constitution of Kenya.
2. The House Committee herein through the office of the Clerk of the National Assembly has blatantly ignored and/or refused to respond to the Objectors letter dated 22nd November 2022 whose contents sought information that was in tandem with the Provisions of Article 50 of the Constitution of Kenya. Herein annexed for ease of reference.
3. The Petition as filed and the directions as issued by the House Committee on the hearings thereof contravene and fall foul of the Provisions as set out in Standing Order No. 230 (4) on the the issue of allowable time required to respond and defend a petition as filed herein.
4. The allowable time that the Objector has been granted to defend himself falls foul of Article 50 and Article 31 of the Constitution of Kenya.
5. That committee on Justice and Legal Affairs has no jurisdiction to entertain the Petition as filed against the Objector pursuant to the provisions of Standing Order Number 223(f) as read together with sections 3(2) 35 and 36 of the Public Officer Ethics Act.
6. The Petition as filed are incompetent as they violate the provisions of Standing Order No. 223(f) (as read together with Standing Order Number 230(1) which provide that a petition cannot be admitted to hearing unless it indicates whether any efforts have been made to have the matter addressed

by a relevant body and whether there has been any response from that body or whether the response has been unsatisfactory.

7. The alleged grievances as laid out in the Petition are scanty at best and lack critical details on the exact nature of the Objectors omission and/or commission that would have constituted violations of the constitution, or to have amounted to alleged gross misconduct or incompetence.
8. None of the four Petition which were served upon the Objector contained the evidence on which it is grounded, which mean that the evidence in support of each of the Petition will only be known once the hearings begin.
9. The Objector is thus unable to adequately prepare his defence in the absence of critical information that has been sought through this Honourable House.
10. The Petition as filed before this House are primarily premised on the affidavit as filed by IEBC Chairman Wafula Chebukati before the Supreme Court and deal with matters which none of the Petitioners can depone to from their own knowledge and as such it is only proper that the deponent of the said affidavit is summoned before this House for purposes of cross-examination.
11. Any adverse determination against the Objector deriving from these proceedings will visit devastating social, economic, political and professional consequences upon the Objector on account of gross violation of his constitutional rights.
12. In the circumstances, it is only fair that these proceedings be stayed pending the receipt by the Objector, from the Petitioners of such information and materials that he needs to fully understand the charges facing him, particulars whereof are detailed in the letter dated 22nd November 2022 from the Objector's counsel.

Dated at Nairobi this 23RD day of NOVEMBER 2022



GICHAMBA & COMPANY ADVOCATES
ADVOCATES FOR COMMISSIONER FRANCIS WANDERI

DRAWN & FILED BY:

GICHAMBA & COMPANY ADVOCATES
NGONG HILLS HOTEL OFFICE SUITES
3RD FLOOR

P O BOX 74871-00200

NAIROBI

Email: gichamba@gichambaadvs.co.ke

TEL: 0722 643 813

TO BE SERVED UPON:

1. CLERK OF THE NATIONAL ASSEMBLY
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
P O BOX 41842-00100
NAIROBI
TEL: +254-020-2221291
2. CHAIRMAN, JUSTICE & LEGAL AFFAIRS COMMITTEE
3. RACHIER & AMOLLO LLP
MAYFAIR CENTRE, 5TH FLOOR
RALPH BUNCHE ROAD
P O BOX 55645-00200
NAIROBI
TEL: +254-020-2716013, 0722 204778, 0733 616662
Email: lawtechs@rachieradvs.co.ke
4. APOLLO & CO. ADVOCATES
KINDARUMA COURT, SUITE B2
KINDARUMA ROAD - KILIMANI
P.O. BOX 2073-00100
NAIROBI.
Email: apollo@aca.co.ke
TEL: 0733 725 482
5. KTK ADVOCATES
KEMU TOWERS, 4TH FLOOR,
UHURU HIGHWAY/UNIVERSITY WAY,
P. O. BOX 10176-00100
NAIROBI
Email: mail@tkk.co.ke
TEL: 0712 113 888, 0788 646 283

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

IN THE MATTER OF PETITIONS FILED BY:

- 1. REV. DENNIS NTHUMBI;**
- 2. REPUBLICAN LIBERAL PARTY;**
- 3. GEOFFREY LANGAT; AND**
- 4. OWUOR STEVE GERRY**

SEEKING REMOVAL OF JUSTUS NYANG'AYA AS IEBC COMMISSIONER

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **JUSTUS NYANG'AYA** (Hereinafter called "**The Objector**") shall raise a preliminary objection at the hearing of the above proceedings on the following **GROUND**S:

- a) That this departmental committee on Justice and Legal Affairs has no jurisdiction to entertain the four petitions filed against the Objector pursuant to the provisions of Standing Order Number 223(f) as read together with sections 3(2) 35 and 36 of the Public Officer Ethics Act.
- b) All the FOUR petitions facing the Objector are incompetent because they violate the provisions of Standing Order No. 223(f) [as read together with Standing Order Number 230(1)] which provide that a petition cannot be admitted to hearing unless it indicates whether any efforts have been made to have the matter addressed by a relevant body and whether there has been any response from that body or whether the response has been unsatisfactory.
- c) That these proceedings contravene Standing Order No. 230(4) of the National Assembly which require **EACH PETITION** to be heard and determined within **FOURTEEN (14) DAYS**.
- d) Since FOUR (4) petitions have been filed seeking removal of the Objector from being a member of IEBC, it follows logically that each of the FOUR petitions should have been allocated a period of **FOURTEEN (14) DAYS** totalling to **FIFTY-SIX (56) DAYS** which would have been sufficient for the Objector to prove his innocence.

- e) According to the programme that was sent to the Objector, he has been given only **ONE (1) HOUR** to respond to a total of **FOUR (4)** separate and independent petitions, which is not sufficient to permit a fair trial.
- f) Under Article 50(1) of the Constitution, every person has a right to a fair trial before a court, a tribunal or any "other body" conducting a hearing which may culminate into the making of a decision that may adversely affect his rights and interests.
- g) A Parliamentary Committee conducting a hearing which is intended to kick-start the process of removing a constitutional office holder from office is therefore under a duty to ensure its proceedings comply with the minimum standards of fair trial under the constitution.
- h) The basic ingredients of a fair trial under the constitution as well as the international human rights law include the following:
 - (i) The right to be given sufficient details to understand the charges with a view to preparing a defence thereto;
 - (ii) The right to be given **ADEQUATE TIME** and **FACILITIES** to prepare for a defence;
 - (iii) The right to be given **IN ADVANCE** evidence that is intended to be used against the accused person;
 - (iv) The right to be given the opportunity to call witnesses to support the person accused's version of truth and to controvert his accuser's version of truth; and
 - (v) The right to challenge evidence presented against the person accused.
- i) Each of the above rights, which are all comprised within the broader rubric of the right to fair trial are threatened with violation in the context of the impending impeachment proceedings instituted as against the Objector unless the orders sought herein are granted by this committee.
- j) The charges laid against the Objector lack critical details without which the Objector cannot understand exactly what actions attributable to him are alleged to have constituted violations of the constitution, or to have amounted to gross misconduct or incompetence.
- k) By his advocate's letter dated 22nd November 2022, the Objector has requested for such details but this committee intends to start the hearings even before the

Objector receives such information and materials as will enable the Objector to understand exactly what charges are facing him.

- l) Calling a person to defend himself against charges which he does not understand is the clearest violation of the right to fair trial.
- m) In the circumstances, it is only fair that these proceedings be IMMEDIATELY HALTED or at the very least stayed pending the receipt by the Objector, from the Petitioners of such information and materials that he needs to fully understand the charges facing him, particulars whereof are detailed in the letter dated 21st November 2022 from the Objector's lawyers.
- n) As already explained above, although the Objector is entitled to FIFTY-SIX (56) DAYS to be heard with respect to the FOUR (4) petitions, while according to the program already circulated this committee, he is being given barely ONE (1) HOUR, which is far insufficient.
- o) Besides, although there are adequate facilities that prove the innocence of the Objector in the possession power and custody of the petitioners as well as other agencies (such as Bomas of Kenya and IEBC) and although the Objector has requested such persons to furnish him with such facilities for purposes of proving his innocence and such persons are in the process of preparing such facilities for purposes of releasing the same to the Objector (as evidenced by the IEBC's letter to Bomas of Kenya dated 22nd November 2022) this committee insists on kick starting these proceedings even before he receives such facilities. *(The letter dated 22nd November from IEBC to Bomas of Kenya is annexed).*
- p) None of the four petitions which were served upon the Objector contained the evidence on which it is grounded, which mean that the evidence in support of each of the petitions will only be known once the hearings begin.
- q) The Objector cannot therefore prepare with his advocate on how to defend himself against the evidence which he does not know.
- r) The Objector has requested the petitioners, through the office of the Clerk, to furnish him with such evidence ahead of the commencement of the hearings, and is still waiting to be furnished with that evidence. However, even before the Objector is furnished with such evidence, these proceedings have been

commenced. This essentially means that the Objector will have been denied a fair trial.

- s) The Objector has several witnesses who are ready and willing to appear before the appropriate committee to demonstrate the falsity of the allegations made against him in the four petitions.
- t) In his advocate's letter dated 18th November, 2022, the Objector sought to know whether he will be permitted to call witnesses. Vide the letter dated 22nd November, 2022 written by the clerk of the National Assembly the Objector was told that no decision has been taken by this committee on the question whether he will be permitted to call witness. *(A copy of that letter is annexed).*
- u) The Objector cannot prepare with his potential witness unless he has been given the requisite green light. Nevertheless, even as the Objector is waiting for guidance on the question whether he will be permitted to call witnesses the departmental committee hearings are set to commence.
- v) All the four petitions are primarily premised on the affidavit that was filed by IEBC Chairman Wafula Chebukati before the Supreme Court and deal with matters which none of the Petitioners can depone to from their own knowledge.
- w) The Petitioners cannot be cross-examined with respect to allegations made in the affidavit which was filed by Wafula Chebukati before the Supreme Court. Consequently, it is only Wafula Chebukati who can be cross-examined with respect to such issues. In his Advocate's letter dated 21st November 2022 the Objector's Advocate sought to know whether the Objector will be allowed to cross-examine Wafula Chebukati with reference to the contents of his affidavit which has given rise to the four petitions facing the Objector.
- x) In spite of the fact that no response has so far been given to the Objector with regards to the question whether he will be allowed to cross-examine Wafula Chebukati as aforesaid, these proceedings are set to begin.
- y) These proceedings are likely to have devastating effect upon the Objector in view of the fact that any adverse determination resulting therefrom will lead to automatic suspension of the Petitioner.
- z) Any adverse determination against the Objector deriving from these proceedings will also visit devastating social, economic, political and professional consequences upon the Objector.

In these circumstances, it is practically impossible for the petitioner to defend himself of the accusations levelled against him in the Four petitions. Consequently, the Objector **REQUESTS:**

- (a) That these proceedings be **IMMEDIATELY HALTED** or in the alternative that these proceeds be stayed until:
 - (i) This committee gives directions with regards to the issues raised in the letter dated 18th November 2022 (copy whereof is annexed).
 - (ii) This committee gives its directions with regards to the issues raised in the letter dated 21st November 2022.
 - (iii) The Objector is given all the information and facilities that he needs to fully defend himself of the accusations levelled against him in the four petitions.
 - (iv) The Objector is given in advance details of the evidence that the petitioners intend to adduce as against him.
 - (v) The Objector is given adequate time to put together all the evidence he needs to defend himself before this committee.
 - (vi) This committee gives directions on the question whether the Objector will be allowed to call witnesses.
 - (vii) This committee gives directions on whether the Objector will be given the opportunity to cross-examine his main accuser (Wafula Chebukati).

Dated at Nairobi this 23rd day of November, 2022



DR. JOTHAM ARWA
RACHIER & AMOLLO LLP
ADVOCATES FOR JUSTUS NYANG'AYA

DRAWN & FILED BY:

RACHIER & AMOLLO LLP
MAYFAIR CENTRE, 5TH FLOOR
RALPH BUNCHE ROAD
P O BOX 55645-00200

NAIROBI

TEL: +254-020-2716013, 0722 204778, 0733 616662

Email: lawtechs@rachieradvs.co.ke

TO BE SERVED UPON:

1. CLERK OF THE NATIONAL ASSEMBLY
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
P O BOX 41842-00100
NAIROBI
TEL: +254-020-2221291
2. CHAIRMAN, JUSTICE & LEGAL AFFAIRS COMMITTEE
3. APOLLO & CO. ADVOCATES
KINDARUMA COURT, SUITE B2
KINDARUMA ROAD - KILIMANI
P.O. BOX 2073-00100
NAIROBI.
Email: apollo@aca.co.ke
TEL: 0733 725 482
4. KTK ADVOCATES
KEMU TOWERS, 4TH FLOOR,
UHURU HIGHWAY/UNIVERSITY WAY,
P. O. BOX 10176-00100
NAIROBI
Email: mail@tkk.co.ke
TEL: 0712 113 888, 0788 646 283
5. GICHAMBA & COMPANY ADVOCATES
NGONG HILLS HOTEL OFFICE SUITES
3RD FLOOR
P O BOX 74871-00200
NAIROBI
Email: info@gichambaadvs.co.ke
TEL: 0722 643 813



◦ ADVOCATES ◦ COMMISSIONERS FOR OATHS ◦ NOTARIES PUBLIC

PARTNERS

A.D.O Rachier LLB (Dar) LLM (Nbi)
* Otiende Amollo LLB (Nbi) LLM (Nbi) Litt.D,CPM
J. Okome Arwa LLB (Nbi) LLM (Nbi)
Francis Olalo LLB (Goa) CPS (K)
Stephen Ligunya LLB (Nbi) LLM (Nbi)
Alvin Rachier LLB(Wrk)LLM(Ucl)

ASSOCIATES

Jean Ogolla LLB (Moi) MA-ICM (Nbi)
Kevin Wakwaya LLB (Moi) CPM
Ezekiel Munyua LLB (Mak)
William Ongoro LLB (KU)
Marren Adunga LLB (KU)
Rodney Amollo LLB (Nbi)
Samantha Mangla LLB (CUEA)
Grace Maina LLB (JKUAT) ACIArb
Bryson Ometo LLB (Moi)

Your Ref:

Our Ref:

Date: 18-Nov-22

The Clerk
National Assembly
Parliament Buildings
Nairobi

Attention Mr. Samuel Njoroge

Dear Sir,

RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N NTHUMBI,
GEOFFREY LANGAT AND OWUOR STEVE GERRY
OUR CLIENT - JUSTUS NYANG'AYA

We refer to the above petitions and wish to bring to your attention the fact that we have been retained to act for our above-named client in connection therewith. Before we file any response on behalf of our client however, our first responsibility is to confirm the completeness of the record. Accordingly, we should be grateful if you would kindly but urgently confirm to us whether any other documents, affidavits or annexures may have been filed with yourselves as against our client, apart from the following documents, which are the only documents served upon our client:

1. Petition filed and signed by Owuor Steve Gerry
2. Petition filed and signed by Rev. Dennis Nthumbi, which is supported by an affidavit sworn on 2nd November 2002, which merely confirms that the deponent is the author and originator of the petition.
3. Petition by Republican Liberal Party filed and signed by Zachariah M Matayo
4. Petition filed and signed by Geoffrey Langat of ID No. 25154044

Furthermore, we should be grateful if you would also kindly but urgently confirm to us whether our client will be given the opportunity to attend the Parliamentary Committee proceedings during the presentation of the case against him by the petitioners for purposes of listening to the factual allegations being made against him by all the petitioners.

Mayfair Centre, 5th Floor
Ralph Bunche Road
P O Box 55645 - 00200
Nairobi, Kenya

E:lawtechs@rachieradvs.co.ke,

VAT REG NO. 0185055T
PIN NO. P051222196B

WHEN REPLYING PLEASE
QUOTE OUR REFERENCE

M: +254722204778
+254733616662
T: +254202716012
+254202716013
+254202716015

www.rachieradvs.co.ke

*on leave of absence

As you are no doubt aware, the allegations made against our client in the four petitions are extremely serious and the reliefs sought as against our client are likely to visit disastrous consequences on him socially, professionally and even politically. Our client is therefore entitled to a fair trial.

Article 50(1) of the Constitution of Kenya provide that every person has a right to a fair trial before a court, a tribunal or any other "body". A Parliamentary Committee hearing a petition seeking to remove a state officer is therefore "a body" within the meaning of Article 50(1) aforesaid, which must conduct its proceedings in such a manner as to ensure that any person who might be adversely affected by its decisions is given a fair hearing.

The ingredients of a fair hearing under International Human Rights Law includes the following:

- a. The right to be informed of the charge against the person accused of any wrongdoing with sufficient details to answer it;
- b. The right to be given adequate time and facilities to prepare a defence to the accusations;
- c. The right to be present when the accusations are being levelled against oneself;
- d. The right to be availed all evidence that is sought to be used against the person accused in good time before he can be called upon to defend himself; and
- e. The right to confront and challenge the evidence presented by his accusers.

Our instructions are therefore to demand, as we hereby do as follows:

- i. That our client be allowed to attend all the Parliamentary Committee proceedings from the beginning to the end of the presentation of the case against him, whether personally or by advocate, so that he is enabled to listen to all the accusations that will be levelled against him by all the petitioners, and to confront the said petitioners.
- ii. That our client be allowed, whether personally or through his advocate, to cross-examine each of the petitioners to ascertain the veracity of their accusations against our client.
- iii. That if no cross-examination of the petitioners will be permitted, then our client be permitted to submit questions to the petitioners before the commencement of the proceedings, which questions should be answered either before the commencement of the proceedings or during hearing.
- iv. That after the conclusion of the presentation of the case against our client, that our client be furnished with the complete record of all the proceedings containing all the evidence and/or allegations made against him by each of the petitioners, as well as all the questions asked by the Committee members, and the answers given to all such questions, at least **ONE (1) DAY** before he can be called to appear before the same Committee to defend himself.
- v. That our client be given the opportunity to call such witnesses as he will require not only to controvert the allegations made against him by the petitioners but also to support his own evidence.

- vi. That if witnesses are not permitted, then our client be allowed to submit witness statements from such persons as are ready and willing to appear as his witnesses before the Parliamentary Committee.
- vii. That our client be given at least **THREE (3) HOURS** to defend himself before the Parliamentary Committee.
- viii. That the date and time already set for the appearance of our client before the Parliamentary Committee be adjusted in such a manner as to permit full compliance with the basic touchstones of a fair trial as summarised above.

Your kind but urgent response to the issues raised above will be highly appreciated.

Yours Faithfully
RACHIER & AMOLLO LLP

A handwritten signature in black ink, appearing to be 'DR. J.O. ARWA', with a long horizontal stroke extending to the left.

DR. J.O ARWA

CC: CLIENT



◦ ADVOCATES ◦ COMMISSIONERS FOR OATHS ◦ NOTARIES PUBLIC

PARTNERS

A.D.O Rachier LLB (Dar) LLM (Nbi)
* Otiende Amollo LLB (Nbi) LLM (Nbi) Litt.D, CPM
J. Okome Arwa LLB (Nbi) LLM (Nbi)
Francis Olalo LLB (Goa) CPS (K)
Stephen Ligunya LLB (Nbi) LLM (Nbi)
Alvin Rachier LLB(Wrk)LLM(Ucl)

ASSOCIATES

Jean Ogolla LLB (Moi) MA-ICM (Nbi)
Kevin Wakwaya LLB (Moi) CPM
Ezekiel Munyua LLB (Mak)
William Ongoro LLB (KU)
Marren Adunga LLB (KU)
Rodney Amollo LLB (Nbi)
Samantha Mangla LLB (CUEA)
Grace Maina LLB (JKUAT) ACI Arb
Bryson Ometo LLB (Moi)

Your Ref:

Our Ref:

C/5957/22

Date 21st Nov. 2022

The Clerk
National Assembly
Parliament Buildings
NAIROBI

ATTENTION: SAMWEL NJOROGUE

Dear Sir

RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N. NTHUMBI, GEOFFREY
LANGAT AND OWUOR STEVE GERRY

We refer to the above matter and to our letter dated 18th November 2022 and note, with great concern, that you have not seen it fit to favour us with any response thereto, in spite of the fact that our client urgently needs your response on the issues raised in that letter for him to be able to prepare his defence strategy. Your continued silence is therefore highly prejudicial to our client.

We further wish to advise that upon careful scrutiny of the accusations made against our client, we have encountered numerous challenges in our endeavour to unravel exactly what our client is alleged to have done wrong and which is said to constitute violations of the constitution or to amount to gross misconduct, as alleged by the petitioners. Accordingly, there is an urgent need for our client to be furnished with additional information and materials.

The main accusations against our client, as captured in all the four petitions, may be summarised as follows:

- (a) That he agreed to moderate the results of the just concluded presidential elections at a meeting between IEBC commissioners and certain individuals including Raphael Tuju, Amos Wako and Advocate Kyalo Mboju.
- (b) That he filed an affidavit in support of the petition filed before the Supreme Court challenging the presidential elections results.
- (c) That he agreed to certain proposals by the National Security Advisory Committee (NSAC) to the effect that the results of the presidential election should be changed to avert chaos that would erupt if a certain presidential candidate was declared the winner.

Mayfair Centre, 5th Floor
Ralph Bunche Road
P O Box 55645 - 00200
Nairobi, Kenya

E:lawtechs@rachieradvs.co.ke,

VAT REG NO. 0185055T
PIN NO. P051222196B

WHEN REPLYING PLEASE
QUOTE OUR REFERENCE

M: +254722204778
+254733616662
T: +254202716012
+254202716013
+254202716015

www.rachieradvs.co.ke

*on leave of absence

- (d) That since our client was seen on television announcing results, alongside other commissioners, statements that were read by four commissioners to the effect that the presidential election was opaque did not reflect what they truly and sincerely believed in. On the contrary, they comprised of false, but incendiary, statements that were targeted at subverting the will of the electorate.

To be able to make sense of the above accusations, in the context of the various constitutional and statutory provisions cited, our client requires the petitioners to furnish him with the information and materials outlined hereunder with respect to each of the above accusations.

(a) CONTENTION THAT HE AGREED WITH A REQUEST TO MODERATE RESULTS

With respect to the accusation that our client agreed to a request by Raphael Tuju and Amos Wako to moderate results of the presidential election, our client maintains that he never attended that meeting. The Petitioners however insist that he agreed with such proposals. In these circumstances, it is not possible for our client to defend himself unless he is furnished by each of the petitioners, with the following:

- (i) CCTV footage indicating the persons who attended that meeting.
- (ii) The specific words that were allegedly uttered by our client which, according to the petitioners, could be interpreted to mean that he agreed with the alleged proposal to moderate results.
- (iii) The specific mode of communication that was used by our client to remotely convey such agreement.

(b) CONTENTION THAT HE FILED AFFIDAVIT SUPPORTING THE PETITIONERS BEFORE THE SUPREME COURT

While all the petitioners maintain that our client SUPPORTED the petitions, our client insists that he OPPOSED the petitions which were filed challenging the results of the presidential election (save for specific concerns that he raised with respect to access to the server by unauthorised persons). The petitioners further insist that he filed an affidavit SUPPORTING the petitions. In these circumstances our client is unable to respond to such accusation, unless he is furnished with a copy of the affidavit which our client allegedly filed before the Supreme Court and in which he SUPPORTED the petitions.

(c) CONTENTION THAT HE AGREED WITH NSAC PROPOSALS

Although all petitioners maintain that our client supported the proposals that were allegedly made by one Kennedy Kihara on behalf of NSAC to the effect that a particular presidential candidate should not be declared as a winner, our client maintains that he never uttered a word when NASC members visited IEBC at Bomas. In these circumstances, it is not possible for our client to defend himself unless each of the petitioners furnish him with the following:

- (i) CCTV footage showing exactly what happened when NSAC visited IEBC Commissioners at Bomas of Kenya.
- (ii) Minutes of the meeting between IEBC Commissioners and the NSAC members.
- (iii) The form in which the alleged "agreement" was conveyed, whether orally, by conduct or in writing,
- (iv) If in writing, a copy of the written document, and

- (v) If orally, then the specific words uttered by our client which were interpreted by each of the petitioners to constitute "agreement" with NSAC proposal.
- (d) CONTENTION THAT THE FOUR COMMISSIONERS' STATEMENTS TO THE EFFECT THAT THE RESULTS WERE OPAQUE WERE INTENDED TO SUBVERT THE WILL OF THE ELECTORATE

With respect to this particular accusation, the Petitioners claim that because they saw our client announcing some results, he was actively involved in the electoral exercise and consequently he could not have honestly and sincerely believed that the results were opaque. This then leads them to the conclusion that such statements were merely intended to subvert the will of the electorate. On the other hand, our client maintains that he was not involved in the process of developing Form 34C which contained the results that were announced by the chairman, and that while he only announced a few constituency results, he did not know and could not verify whether such results had been included in the Form 34C, which contained presidential elections at county level, and which was prepared without his involvement or input, and finally, whose content he was not given any opportunity to verify.

In these circumstances, and in view of the specific allegations made against our client by the petitioners, our client needs the following information and materials to be able to defend himself:

- (i) CCTV footage which would show if any meeting was held at Bomas during which the four commissioners could have been given details of all the County Results that had been verified and tallied.
- (ii) CCTV footage showing the four commissioners announcing constituency results which would reveal the ACTUAL RESULTS that were read by them in the full glare of the cameras.
- (iii) A copy of Form 34C which was shown to the four commissioners by IEBC Chairman Wafula Chebukati, and which triggered the protest from the four commissioners, which alone would confirm whether any of the results read by the four commissioners was indicated on the face of the Form 34C, that contained the final presidential results.
- (iv) Details of the facts supporting the petitioners' contention that our client did not sincerely and honestly believe that the results were opaque.
- (v) Details of any provision of the constitution, or any statute which makes it illegal for a Commissioner of IEBC to state his opinion with respect to the opacity or any other characteristic of the results of any election.
- (vi) Details of any provision of the constitution, or any statute which makes it mandatory for IEBC Commissioners to be present when election results are being declared by the Chairman of IEBC.

In addition to the foregoing, and contrary to our earlier letter, we have instructions to notify you that our client will require slightly more time – upon being furnished with the above details – to prepare and deliver his defence. We are aware that Rule 230(4) of the Standing Orders allocate a maximum of **FOURTEEN (14) DAYS** for "EACH" petition. The program that has been published and which allocates to **FOUR** petitions filed against **FOUR** Commissioners (i.e. each commissioner must prepare and respond to four independent petitions) a period of **FOURTEEN (14) DAYS** for **ALL** the petitions, and **ONE (1) HOUR** for each commissioner, is too tight to permit a meaningful response to the weighty issues raised in each of the petitions, taking into account the likely impact of the said petitions upon our client. That programme

violates our client's right to fair trial, as well as his right to fair administrative action, and needs to be amended in the interests of justice.

Consequently, our instructions are to request as we hereby do, that our client be given a minimum of **SEVEN (7) DAYS** to prepare and deliver his response, excluding the period taken by the petitioners to present their case. Kindly but urgently therefore furnish us with the amended programme to enable us prepare with our client.

Finally, we should also be grateful if you would kindly but urgently confirm to us if our client will be given the opportunity to cross-examine the Chairman of IEBC, Wafula Chebukati, in view of the fact that virtually all the allegations made in the four petitions are premised on the affidavit he filed before the Supreme Court, the contents of which was treated by all petitioners as Gospel truth which is the reason why all the petitioners completely ignored the contents of all other affidavits which were also filed before the Supreme Court and which denied those allegations.

Your kind but very urgent response will be highly appreciated.

Yours faithfully
RACHIER & AMOLLO LLP



DR. JOTHAM OKOME ARWA

Cc: The Speaker, National Assembly
Cc: The Majority Leader, National Assembly
Cc: The Minority Leader, National Assembly
Cc: The Chairperson, Justice & Legal Affairs Committee
Cc: Each Member of the Justice and Legal Affairs Committee.

REPUBLIC OF KENYA

Telegraphic Address
Bunge, Nairobi
Telephone 222 1291
Fax: 224 3694
Email: clerk.nationalassembly.go.ke
Website: www.parliament.go.ke



Clerks Chambers
National Assembly
Parliament Buildings
P. O. Box 4184200100
NAIROBI, KENYA

OFFICE OF THE CLERK – NATIONAL ASSEMBLY

When replying please quote
Ref: NA./CNA/CORR/2022 (274)

21st November, 2022

Rachier & Amollo LLP
Mayfair Centre, 5th Floor
Ralph Bunche Road
P. O. Box 55645 – 00200
NAIROBI
lawtechs@rachieradvs.co.ke

"ADVANCE COPY by email"

Attn: Dr. J. O. Arwa

Dear

RE: PETITIONS FILED BY REPUBLICAN LIBERTY PARTY, DENNIS N. NTHUMBI,
GEOFFREY LANGAT & OWOUR STEVE GERRY—COMMISSIONER JUSTUS
NYANG'AYA

The above matter refers.

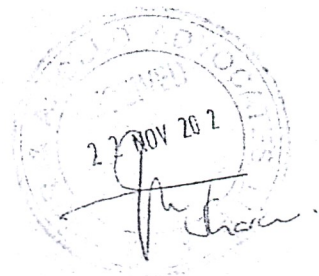
We confirm that the documents forwarded are the complete record of the documents submitted by the four (4) Petitioners and conveyed to the Departmental Committee on Justice and Legal Affairs by the Hon. Speaker of the National Assembly on 15th November, 2022.

We note that our letter to your client dated 16th November, 2022 Ref: NA/CNA/CORR/2022(254), did invite your client to attend the hearings of the Committee to be conducted on Thursday, 24th November, 2022, and Friday 25th November, 2022 in person or by Advocate. In line with the guidance made by the Hon. Speaker, your client shall be at liberty to cross-examine each of the four (4) Petitioners as indicated in the Schedule of hearings contained in the letter.

We have conveyed your letter to the Departmental Committee on Justice and Legal Affairs that is now seized of the matter and shall be able to guide on paragraphs (iv), (v), (vi), (vii) and (viii) of your demand in accordance with its Schedule and the applicable provisions of the National Assembly Standing Orders.

Yours

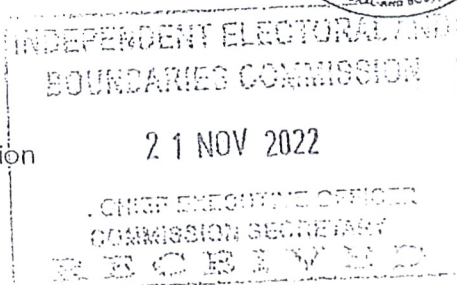
SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY





21st November 2022

The Chief Executive Officer
Independent Electoral and Boundaries Commission
Anniversary Towers
NAIROBI



RE: REQUEST FOR CCTV FOOTAGE RECORDS

As you are no doubt aware, a petition has been presented to Parliament seeking to remove me as a Commissioner for IEBC, on the basis of the events that transpired during the just concluded presidential election.

In order to defend myself, I urgently need the following:

- (i) CCTV footage giving details of all the presidential election results that were read out to the public between 9th and 15th August 2022;
- (ii) CCTV footage showing what transpired during the meeting that was alleged in the Affidavit of Chairman Wafula Chebukati to have taken place on 15th August 2022 at 3.00am between the Commissioners of IEBC and Raphael Tuju, Senator Amos Wako and Advocate Kyalo Mbobu;
- (iii) CCTV footage of what transpired during the meeting that was alleged to have taken place between the Commissioners of IEBC and members of the National Security Advisory Committee; and
- (iv) Minutes of all plenary meetings that were held by the Commissioners at Bomas of Kenya between 9th August 2022 and 15th August 2022.

I should be grateful if I would receive the same by close of business today.

JUSTUS NYANG'AYA
COMMISSIONER

address: Anniversary Towers, 6th Floor, off University Way, P.O Box 45371-00100 Nairobi, Kenya
phone: +254 (0) 27690000, fax: +254 (0) 20 2219185, email: info@iebc.or.ke, website: www.iebc.or.ke



REF: IEBC/CS-CEO/BOMAS/22/11/2022

22nd November, 2022

Mr. Peter Gitaa
General Manager/CEO
Bomas of Kenya
P. O. Box 40689 – 00100
NAIROBI

Dear

*Mr. Gitaa,***RE: REQUEST FOR CCTV FOOTAGE RECORDINGS**

Further to various petitions presented to Parliament to remove the (4) four IEBC Commissioners, the Commission requests CCTV footage recordings of the following events:-

1. CCTV footage giving details of all the presidential election results that were read out to the public between 9th August, 2022 and 15th August, 2022 at the Auditorium.
2. CCTV footage showing what transpired during the meeting that took place on 15th August, 2022 at 3.00 am between the Commissioners of IEBC and Raphael Tuju, Amos Wako and Advocate Kyalo Mbobu at the Auditorium.
3. CCTV footage of the meeting held at the Chairman's Boardroom at the Call Centre Hall Building between the Commission and the members of the National Security Advisory Committee.

The Commission will appreciate your urgent response.

Yours

Sincerely,


Marjan Hussein Marjan
Commission Secretary/CEO

N.O.O: Commissioner Justus Nyang'aya

address: Ar
phone: +254

May, P.O Box 45371-00100 Nairobi, Kenya
Email: info@iebc.or.ke, website: www.iebc.or.ke



OPPO A76

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



TO: Commissioner Justus Nyang'aya

FROM: Commission Secretary/CEO

REF: IEBC/CS-CEO/22/11/22

DATE: 22nd November, 2022

SUBJECT: REQUEST FOR CCTV FOOTAGE RECORDINGS AND PLENARY MINUTES HELD AT THE BOMAS OF KENYA

Reference is made to your memo dated 21st November, 2022 requesting for the CCTV footage recordings and all plenary minutes held between 9th August, 2022 and 15th August, 2022 at Bomas of Kenya.

In respect to your request to have the CCTV footage recordings, enclosed please find the letter sent to the General Manager/CEO Bomas of Kenya requesting him to avail them as per your request. These will be shared upon receipt.

As regards the request to have the minutes for all the plenary meetings held between 9th August, 2022 and 15th August, 2022, the Commission did not hold any plenary meetings during the specified dates.


Marjan Hussein Marjan

Encls



OPPO A76



LANGATA/FOREST EDGE ROAD
P.O. BOX 40689-00100 NAIROBI, KENYA
TEL: +254 208891802, 8890793/5/8
020 8068400, 8891575
EMAIL: info@bomasofkenya.co.ke
Website: www.bomasofkenya.co.ke

BOK/GM/IEBC/2022-20

22nd November 2022

Marjan Hussein Marjan

Commission Secretary/CEO

Independent Electoral and Boundaries Commission

Po Box 45371-00100

NAIROBI

Dear Mr. Marjan,

REQUEST FOR CCTV FOOTAGE RECORDINGS

Reference is made to the above subject matter and your letter ref. IEBC/CS-CEO/BOMAS/22/11/2022 dated 22nd November 2022.

We write to inform you that the Commission is hereby granted access to the requested CCTV footage recordings.

In accordance with our contractual obligation to the Commission, we provide the following:-

1. CCTV Camera surveillance footage of all presidential election results that were read out to the Public between 9th August 2022 and 15th August 2022 at the Auditorium;
2. CCTV Camera surveillance footage showing what transpired during the meeting that took place on 15th August 2022 at 3:00 am between the Commissioners of IEBC and Raphael Tuju, Amos Wako and Advocate Kyalo Mbobu at the Auditorium;
3. CCTV Camera surveillance footage of the meeting held at the Chairman's Boardroom at the Call Centre Hall Building between the Commission and the National Security Advisory Committee members.

Kindly note that we do not have CCTV Camera surveillance footage of the interior rooms of all the boardrooms, VIP rooms, Lounges and offices.

In addition, the Commission will be required to send a technical Officer(s) to fetch the requested information by liaising with our Property Manager, Mr. Joseph Njoroge, at info@bomasofkenya.co.ke and/or 0721 614 139.

Yours Sincerely,

PETER GITAA

GENERAL MANAGER/CHIEF EXECUTIVE OFFICER



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

PETITION FOR REMOVAL OF IEBC COMMISSIONERS

REPUBLICAN LIBERTY PARTY.....PETITIONER

P.A.

COMMISSIONER FRENE MASIT.....RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

SAMUEL NJOROGE,
CLERK,
NATIONAL ASSEMBLY,
PARLIAMENT BUILDING,
PARLIAMENT ROAD,
NAIROBI. (REF:NA/CAN/CDPR/1005/124)

In response to the Petition dated 12.10.12 by the Republican Liberty Party, the Respondent, Commissioner Frene Masit, shall relying solely on the filed Petition *ex facie* raise Preliminary Objection that this Committee has no jurisdiction to hear this Petition on *inter alia* the following grounds:-

1. THAT the Petition doesn't comply with *Section 16 (1) of The Political Parties Act, No. 11 of 2011.*

2. THAT the signatory, Zachariah M. Matayo hasn't evidenced how he is *sine qua non* Republican Liberty Parry.
3. THAT the Petition refers to *Articles 1, 3, 10, 13, 21, 22, 24, 27, 37, 38, 73, 75, 76, 77, 78, 81, 86, 99, 119, 193, 232, 249 and 251 of The Constitution, Sections 3, 4, 7, 8, 9, 10, 11, 13, 23, 24, 29 and 30 of The Leadership & Integrity Act, Sections 1, 2 and 4 of The IEBC Act, and Sections 3, 8, 9, 10 and 16 of The Public Office Act* and such that the Petition is muddled, *exclusive*, *ambitious* and *superfluous* for the Respondent to answer.
4. THAT the Petition isn't supported by an Affidavit deposing to each and every allegation *seriatim* and thus it remains a hollow statement.
5. THAT the Petition isn't supported by any exhibit, document or evidence.
6. THAT the Petition is hearsay, gossip and empty rhetoric.
7. THAT the Petition doesn't demonstrate in any way or at all, *Serious Violation* or *Any Violation* of the Constitution or the Part of the Respondent.
8. THAT the Petition doesn't demonstrate in any way or at all *Gross Misconduct* or *Any Misconduct* on the part of the Respondent.
9. THAT the Petition doesn't in any way demonstrate *Gross Incompetence* or *Any Incompetence* on the part of the Respondent.
10. THAT the Petition doesn't give adequate notice of the nature and reasons for the proposed reliefs.
11. THAT the Petition is politically biased.

12. THAT the Petition is tainted by ulterior political motives.
13. THAT the Petition is filed *malafide*.
14. THAT the allegations set out in the Petition don't warrant Petitions for Impeachment when alternative remedies are provided and available.
15. THAT the reliefs sought are not proportionate to the allegations.
16. THAT the Petition doesn't establish Constitutional, Statutory or legal basis for Impeachment Proceedings under Article 25 of The Constitution.
17. THAT the Petition is fatally defective for lacking Constitutional, Statutory and legal *substratum*.
18. THAT the Petition or its file is an egregious and violent violation of The Constitution, Statutes and established law.
19. THAT the Petition doesn't meet the mandatory requirements of the Law.
20. THAT the Petition is for Striking Out *in limine*.

Dated at Nairobi this _____ day of _____, 2022

DONALD B. KIPKORIR
KTK ADVOCATES
ADVOCATES FOR THE RESPONDENT

DRAWN & FILED BY:-

KTK ADVOCATES,
KEMU TOWERS,
4TH FLOOR,
UNIVERSITY/ UHURU HIGHWAY,
P.O. BOX 10176,
00100 - NAIROBI, (REF: M/0253/001)

E-mail: chikwato@kemu.co.ke

Cell No. 0712 113 888
0788 646283

TO BE SERVED UPON:

1. ZACHARIAH M. MALAYO
REPUBLICAN LIBERTY PARTY
P.O. BOX 20148,
00100 - NAIROBI.

2. APOLLO MBOYA
APOLLO & CO.
ADVOCATES,
B2 KINDARUMA COURT,
KINDARUMA ROAD
KILELESHI.
P.O. BOX 2073,
00100 - NAIROBI (REF: ACA/NA/1/2022)

E-mail: apollo@apollo.co.ke

Cell No. 0712 113 888
0763 724 280

3. DR. JOTAM O. ARAWA
RACHIER & AMOLLO LLP,
MAYFAIR CENTER,
5TH FLOOR,
RALPH BUNCHE ROAD,
P.O. BOX 55645
00200-NAIROBI. (REF: C/5957/22)

E-Mail: jotam@rachier.co.ke

Cell No: 0722 204 778
0733 012 778

4. NDURU GICHAMBA, LLP
NGONG HILLS HOTEL OFFICE SUITES,
3RD FLOOR,
P.O. BOX 74871
00200-NAIROBI. (REF: CO/13/18/NG)

E-Mail: nduru@nduru.co.ke

Cell No: 0722 643 813

DBK/mn

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

PETITION FOR REMOVAL OF IEBC COMMISSIONERS

REV. DENNNIS NTHUMBI.....PETITIONER

-VERSUS-

COMMISSIONER IRENE MASIT.....RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

SAMUEL NIROGE,
CLERK,
NATIONAL ASSEMBLY,
PARLIAMENT BUILDING,
PARLIAMENT ROAD,
NAIROBI. (REF: NA/CAN/CORA/2022 (251))

In response to the Petition dated 22.11.22 by Rev. Dennis Nthumbi, the Respondent, Commissioner Irene Masit, shall raise Preliminary Objection pursuant the Petition *ex facie* that this Committee has no jurisdiction to hear this Petition on *inter alia* the following grounds:-

1. THAT the Petition refers to Articles 1, 2, 3, 10, 19, 20, 37, 73, 75, 83, 93, 118, 119, 138, 232, 248, 249, 251 and preamble to The Constitution; Sections 7, 8, 9, 10, 11:6, 24, and 29 of The Leadership & Integrity Act, Sections 3, 7, 9, 10, 12, 16, 17, 19, 35, 36, and 38 of The Public Office Act, Sections 4, 9, 26, and 30 of IEBC

Act such that the petition is muddled, expansive, ambiguous and superfluous in the applicable provisions of the law and thus incapacitating the Respondent from adequately responding to it.

2. THAT the Petition isn't supported by an Affidavit deposing to each and every allegation *seriatim* and that it remains a hollow statement.
3. THAT the Petition isn't supported by any exhibit, document or evidence.
4. THAT the Petition is hearsay, gossip and empty rhetoric.
5. THAT the Petition doesn't demonstrate in any way or at all **Serious Violation** or **Any Violation** of the Constitution on the Part of the Respondent.
6. THAT the Petition doesn't demonstrate in any way or at all **Gross Misconduct** or **Any Misconduct** on the part of the Respondent.
7. THAT the Petition doesn't in any way demonstrate **Gross Incompetence** or **Any Incompetence** on the part of the Respondent.
8. THAT the Petition doesn't give adequate notice of the nature and reasons for the proposed reliefs.
9. THAT the Petition is politically biased.
10. THAT the Petition is actuated by ulterior political motive.
11. THAT the Petition is filed *mala fide*.

12. THAT the allegations set out in the Petition don't warrant Petitions for Impeachment when alternative remedies are provided and available.
13. THAT the reliefs sought are not proportionate to the allegations.
14. THAT the Petition doesn't establish Constitutional, Statutory or legal basis for Impeachment Proceedings under *Article 251 of The Constitution*.
15. THAT the Petition is fatally defective for lacking constitutional, statutory and legal *substratum*.
16. THAT the Petition or its file is an egregious and violent violation of The Constitution, Statutes and established law.
17. THAT the Petition doesn't meet the mandatory requirements of the law.
18. THAT the petition is for Striking Out *in limine*.

Dated at Nairobi this _____ day of _____ 2022

DONALD B. KIPKORIR
KTK ADVOCATES
ADVOCATES FOR THE RESPONDENT

DRAWN & FILED BY:-

KTK ADVOCATES,
KeMU TOWERS,
4TH FLOOR,
UNIVERSITY/UHURU HIGHWAY,
P.O. BOX 10176,
00100 - NAIROBI (REF: M/0253/001)

E-mail: naiktk@gmail.com

Cell No: 0712 113 888
0788 646133

TO BE SERVED UPON:

1. REV. DENNIS NTHIYI
P.O. BOX 60024,
00200-NAIROBI.

2. APOLLO MBOYA
APOLLO & CO.
ADVOCATES,
B2 KINDARUMA COURT,
KINDARUMA ROAD,
KILIMANI,
P.O. BOX 2073,
00100-NAIROBI (REF: ACA/NA/1/2022)

E-Mail: naiktk@gmail.com

Cell No: 0770 473 800
0733 725 182

3. DR. JOTHAM O. ARAWA
RACHIER & AMOLLO LLP.
MAYFAIR CENTER,
5TH FLOOR,
RALPH BUNCHE ROAD,
P.O. BOX 55645
00200-NAIROBI. (REF: C/5957/22)

E-Mail: jorah@rachieramollo.com

Cell No: 0722 204 778
0773 610 662

4. NDURU GICHAMBA, LLP
NGONG HILLS HOTEL OFFICE SUITES
3RD FLOOR,
P.O. BOX 74871
00200-NAIROBI. (REF: CO/13/18/NG)

E-Mail: info@nduru-law.com

Cell No: 0722 643 813

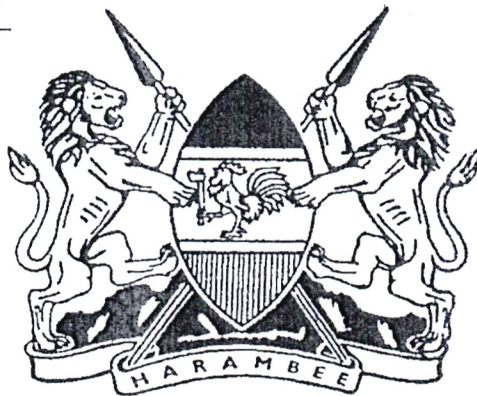
DBK/sr

ANNEXURE 10:

GAZETTE NOTICE

NO. 182 OF 2021

SPECIAL ISSUE



THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXXIII—No. 182

NAIROBI, 1st September, 2021

Price Sh. 60

GAZETTE NOTICE No. 9082

THE CONSTITUTION OF KENYA

THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION ACT

(No. 9 of 2011)

APPOINTMENT

IN EXERCISE of the powers conferred by Article 250 (2) of the Constitution as read with section 5 (2) of the Independent Electoral and Boundaries Commission Act, 2011 and Paragraph 4 of the First Schedule to the Act, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, appoint—

Juliana Whonge Cherera (Ms.),
Francis Mathenge Wanderi,
Irene Cherop Masit (Ms.),
Justus Abonyo Nyang'aya,

to be members of the Independent Electoral and Boundaries Commission, for a period of six (6) years.

Dated the 1st September, 2021.

UHURU KENYATTA,
President.

GAZETTE NOTICE No. 9083

THE CONSTITUTION OF KENYA

THE TEACHERS SERVICE COMMISSION ACT

(No. 20 of 2012)

APPOINTMENT

IN EXERCISE of the powers conferred by Article 250 (2) of the Constitution as read with section 8 (10) of the Teachers Service Commission Act, 2012, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, appoint—

Nicodemus Ojuma Anyang (Dr.),
Christine K. Kahindi (Ms.),
Sharon Jelagat Kisire (Ms.),
Annceta G. Wafukho (Ms.),
Salesa Adano Abudo,

to be members of the Teachers Service Commission, for a period of six (6) years.

Dated the 1st September, 2021.

UHURU KENYATTA,
President.